

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

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PLS

74-1164

~~T-3050~~

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. T-3050

UNITED STATES OF AMERICA,

Appellant,

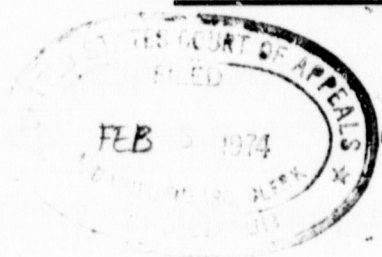
—against—

FRED FERNANDEZ,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX



EDWARD JOHN BOYD, V,
United States Attorney,
Eastern District of New York.

PAGINATION AS IN ORIGINAL COPY

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US.

WARD Marian
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Bank Robbery

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71 CR 218

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DATE	PROCEEDINGS
	of not guilty - Defts application for motions to be made on or before 4-21-71. Bail of \$100,000 continued.
3-16-71	Voucher for compensation and expenses of appointed counsel filed (was for deft HOWARD.
3-17-71	Stenographers transcript dated Mar. 4, 1971 filed.
3-24-71	Notice of Motion to reduce bail as to deft. Fred Fernandez. (set 3/25)
3-25-71	Before BRUCHHAUSEN, J- Case called- deft Fernandez and counsel Eleanor present. Motion argued for reduction of bail. Motion denied.
4-6-71	Before DOOLING J - Case called - Deft HOWARD moves to pledge property at 148-18-222nd St. Springfield Gardens, N.Y. in place of \$10,000 cash or surety bond (on each indictment 71 CR-217 relates) Motion granted - Magistrate directed to execute posting of pledge of property and personal appearance bond.
4-8-71	Notice of Motion filed for suppressing evidence etc. (ret. 4-21-71) (deft Fernandez)
4-13-71	Magistrates records 71 M 521 inserted in criminal file. (Deft Howard)
4-21-71	Before BRUCHHAUSEN, J. Case called Deft's FERNANDEZ motion for suppression. Motion argued Decision reserved.
4-22-71	Notice of Pre-Trial motions filed returnable April 29, 1971. Date set before Judge BRUCHHAUSEN, as to deft Howard (see 71CR217)
4-27-71	By Bruchhausen, J. - Memorandum and Order filed on application to suppress all evidence seized (Fred Fernandez) said motion is adjd to the trial. Motion for Bill of Particulars denied except to the extent hereinbefore allowed etc.
5-20-71	By Bruchhausen, J - Memorandum and Order filed denying deft Horsun Howard's motion for dismissal of the indictment and a direction that said deft be proceeded against as a juvenile ; suppression plea is adjd to the date of trial; deft is entitled to copies of any statements made by him etc. (see Order)
6-8-71	Before BRUCHHAUSEN, J.-Case called-Defts. and counsel present-Adjd to 6-9-71
6-9-71	Before Bruchhausen J - Case called & adjd to June 21, 1971.
6-15-71	Notice of appearance filed as to deft Howard. Marian B. Beeler is counsel
6-21-71	Before Bruchhausen, J- Case Called- Defts. & Counsel present- Deft HOWARD moved for a severance--motion denied- Deft. Fernandez moves for an order transcript to be provided--granted. All sides ready. Trial commenced. Identification hearing commenced-continued to 6-22-71.
6-22-71	Before Bruchhausen, J- Case called- Trial resumed. Continued to 6-23-71

DATE	PROCEEDINGS
6-23-71	Before BRUCHHAUSEN, J.-Case called-Hearing resumed (identification), to cont'd -Motion to suppress is denied-Motion to sever Reide is granted-Motion to dismiss indictment by Eleanor Piel is denied-Trial resumed to 6-24-71.
6/24/71	Before Bruchhausen, J.-Case Called-Trial resumed & cont'd to 6/25/71
6/25/71	Before Bruchhausen, J.-Case Called-Trial resumed & CONTD to 6/28/71
6/28/71	Before Bruchhausen, J.-Case Called-Trial resumed & cont'd to 6/29/71
6-30-71	6 Stenographers transcripts filed. pgs 1-937. —
6-30-71	Before BRUCHHAUSEN, J.- Case called- jury verdict as to deft Howard guilty on counts 1 and 2. Bail revoked and deft Howard remanded. Co declares a mistrial As to deft Fernandez . Sentence as to deft Howard adjd without date. Date for new trial as to deft Fernandez also adjd out date.
6-28-71 7-2-71	By Bruchhausen J - Order filed the court reporter transcribe the portions of the trial order by the US Atty & furnish one copy to counsel Eleanor Jackson Piel and another to Marion Beeler, Esq. and further ordered that the cost be divided equally between the US Atty and the Admin.Office off the US Courts, etc. in the proportion of one-third to the US Atty and two thirds to the Admin.Office of the U.S. Courts. (copy to Court Reporters)
7-6-71	Notice of Motion to dismiss Indictment etc. returnable 7-8-71 at 10:00 A.M. filed as to defendant FERNANDEZ
7-9-71	Before Costantino J - Case called - Deft FERNANDEZ and counsel Eleanor Jackson Piel present - Motion to dismiss indictment - Motion Denied Case marked ready for trial on July 19, 1971 at 10:00 A.M.
7-19 -71	Before COSTANTINO J - Case called - Deft FERNANDEZ & counsel present. Trial ordered & BEGUN. Jurors selected and sworn - Govt hearing on Miranda Warning begun. Court finds deft was properly warned on Miranda Issue. Court denied all motions made in 1st trial - Trial continued to July 20, 1971 at 10:00 am.
7-20-71	2 stenographers transcripts filed (pages 938 to 987)
7-20-71	Before Costantino J - Case called - Deft FERNANDEZ present with counsel - Trial resumed - Govt rests - Defts motion for Judgment of Acquittal - Motion denied - 2 Envelopes marked Court Exs #1 and 2 ordered sealed by the Court - Trial continued to 7-21-71 at 11:00 am.
7-20-71	By COSTANTINO, J - Order filed that the Court Reporter transcribe the court proceedings, etc. and that payment shall be divided

DATE	PROCEEDINGS
	between the US Atty and the US Courts and the Director of the Admin. Office of the US Court shall pay for the copy of the transcript to be delivered to counsel assigned to represent the deft (Fernandez)
7-21-71	Before Costantino, J - Case called - Deft FERNANDEZ & counsel present. Trial resumed - Govts motion to reopen case for rebuttal witness agent Lawrence Sweeney recalled to the stand - Deft rests - Govt rests - Trial continued to July 22, 1971.
7-22-71	Before COSTANTINO, J. - COSTANTINO Case called - Deft FERNANDEZ and counsel present - Juror #6 reported sick - Jurors move up one seat - Order of sustenance signed - brought into court at 9:15 P.M. - Judge orders Jury locked up for night - Order of Lodging - Order for Transportation and Order for Sustenance signed - Trial cont'd to 7-23-71.
7-22-71	By COSTANTINO, J. - Order of Sustenance and Lodging filed (Breakfast).
7-22-71	By COSTANTINO, J. - Order of Transportation filed from and to Hotel.
7-22-71	By COSTANTINO, J. - Order of Sustenance filed (Lunch)
7-22-71	By COSTANTINO, J. - Order of Sustenance filed. (Dinner)
7-23-71	Stenographer's transcripts dated 7-19-71, 7-20-71 and 7-21-71 respectively filed.
7-23-71	Before COSTANTINO, J. - Case called - Deft FERNANDEZ and counsel present - Trial resumed - Jury continues deliberations - Jury returns and renders verdict of guilty on each of counts 1, 2, 4 - Jury polled and discharged - Deft's motion to set aside verdict and for Judgment of Acquittal - Motions Denied - Bail cont'd - Trial concluded.
7-28-71	Notice of Motion filed as to deft Fernandez for an order setting aside the verdict of guilty and directing an acquittal predicated on the oral motion made therefore immediate after the verdict. Returnable September 7 th , 1971.
8-4-71	Memorandum of Law filed by deft Fernandez in support of motion for acquittal and affidavit of Eleanor Jackson Piel.
8/16/71	Stenographer's transcript of 7/22/71 filed.
9-1-71	Voucher for export services filed (Fred Fernandez) CJA #21.
9-7-71	Before COSTANTINO, J. - Case called - Motion argued - Motion Denied. (FERNANDEZ)
9-21-71	Before COSTANTINO, J. - Case called - Deft FERNANDEZ and counsel present - Deft sentenced to imprisonment for period of 20 years on count 1 and 20 years on count 2 to run concurrently - Deft advised of his rights to appeal pursuant Sec. 32(a)(2) of the FRCP.
9-21-71	Judgment and Commitment filed. Certified copies to Marshal. (FERNANDEZ)
9-29-71	Stenographer's transcript dated 9-7-71 filed. (pages 1-14)

DATE	PROCEEDINGS
10-6-71	Notice of Appeal filed (deft FERNANDEZ)
10-6-71	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals (FERNANDEZ)
10-3-71	Before BRUCHHAUSEN, J. - Case called - Deft/ ^{HOWARD} and counsel present - Deft sente to 15 years imprisonment on counts 1 and 2 to run concurrently - Deft advised of his right to appeal by the court.
10-8-71	Judgment and Commitment filed. Certified copies to Marshal.
10-12-71	Notice of Motion filed for XXXXXXXXXX an order endorsing the appeal filed in forma pauperis as timely, etc. (Fernandez)
10-13-71	Voucher for compensation filed (CJA#21) Fernandez.
10-22-71	Before COSTANTINO, J. - Case called. Deft's motion for an order pursuant to Rule 4(b) for appeal in forma pauperis argued. Decision reserved.
10-28-71	Supplemental Notice of Motion filed for Bill of Particulars & Affidavit in support etc.
10-28-71	Memorandum in Law filed in support of motion to suppress Identification Testimony and Order denying motion etc.
10-28-71	Motion to dismiss the Indictment and Order denying same. etc.
10-28-71	Affidavit of ELAINE A. ORFANOS filed.
10-28-71	By COSTANTINO, J. - Memorandum and Order filed granting deft. FERNANDEZ motion for an order endorsing the appeal filed in forma pauperis as timely.
11-12-71	Record on Appeal certified and mailed to the Court of Appeals (Fernandez)
11-17-71	Acknowledgement received from C of A for receipt of Index to Record on Appeal. (Fernandez)
1-8-72	<i>1-8-72</i> <i>Index to Record on Appeal</i> <i>4-14-72</i> <i>for the Court of Appeals</i>
1-17-72	<i>1-17-72</i> <i>Index to Record on Appeal</i> <i>4-14-72</i> <i>for the Court of Appeals</i>
1-21-72	<i>1-21-72</i> <i>Index to Record on Appeal</i> <i>4-14-72</i> <i>for the Court of Appeals</i>
2/14/72	<i>2/14/72</i> <i>Index to Record on Appeal</i> <i>4-14-72</i> <i>for the Court of Appeals</i>
2/14/72	<i>2/14/72</i> <i>Index to Record on Appeal</i> <i>4-14-72</i> <i>for the Court of Appeals</i>
3-17-72	Certified copy of Opinion and Judgment received from C of A filed reversing judgment of this Court and remanding action (deft Fred Fernandez) JN & USA
3-30-72	Notice of motions filed with affidavit for an order appointing Eleanor Piel as counsel; for an order reassigning case to Brooklyn, NY; for discovery and inspection; all ret. 4-14-72 at 10 AM. (as to deft. Fernan

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DATE	PROCEEDINGS
4-14-72	Before TRAVIA, J. - Case called. Deft FRED FERNANDEZ's motion for appointment of counsel, change of venue and for discovery, etc argued. Motion granted & denied as indicated on the record. Order appointing counsel signed and filed.
5-10-72	Testificandum Petition for Writ of Habeas Corpus Ad EXERCISEMENT filed (witnesses Jerome Lester Reide and Johnny Sellers)
5-10-72	By Weinstein J - Writs issued, ret. May 16, 1972.
5-11-72	Notice of Motion filed for dismissal of the indictment and in the alternative, for further discovery, inspection & copying, etc. (ret. June 2, 1972 at Westbury, NY)
5-15-72	Stenographer's transcript dated 4-14-72 filed.
5-18-72	Index to Record on Appeal received from C of A. Acknowledgment mailed.
5-18-72	Before Travia J - Case called - defts motion to dismiss - Motion argued and motion denied. (Fred Fernandez)
5-25-72	Writs returned and filed executed (Johnny Sellers & Jerome L. Reide)
6-28-72	Notice of motion filed compelling gov't to disclose if electronic devices were employed, etc, ret. 7-7-72 at 10 A.M. (FERNANDEZ).
7-7-72	Before TRAVIA, J. - Case called. Motion argued. Motion granted in part, & denied in part. Submit order.
7-7-72	Affidavit of ELEANOR JACKSON PIEL IN SUPPORT OF MOTION ret 7-7-72, filed.
7-12-72	Petition for writ of habeas corpus ad testificandum filed.
7-12-72	By DOOLING, J. - Writ issued ret 7-24-72 re HORSUN HOWARD.
8-22-72	Stenographers transcript dated Oct 8, 1971 filed (Howard)
8-22-72	Affidavit of JAMES J. CALLY filed (Howard)
10-16-72	Notice of motion filed to dismiss indictment re deft FERNANDEZ ret 10-24-72
10-24-72	Memorandum of Law filed in support of defts motion to dismiss (Fernandez)
10-24-72	Before Travia J - Case called - Motion to dismiss is denied - Case set down for Nov. 8, 1972 for Trial.
10-30-72	Petition for writ of habeas corpus ad testificandum filed.
10-30-72	By COSTANTINO, J. - Writ issued ret 11-8-72 for JOSEPH VITALE.
11-3-72	Petition for Writ of Habeas Corpus Ad Testificandum filed (MOODY & SELLERS)
11-3-72	By Mishler, Ch J - Writ Issued. ret. 11-8-72 (witness MOODY & SELLERS)
11-6-72	Petition for Writ of Habeas Corpus Ad Testificandum filed (Mark Holder)
11-6-72	By Neaher, J - Writ issued. ret. 11-8-72 (Mark Holder)
11-8-72	Writ retd and filed - Executed (Vitale)
11-8-72	Before TRAVIA J - Case called - Deft & counsel present - defts motion to dismiss the Indictment - Motion denied - Defts motion to dismiss Jury panel, etc. Motion denied - Case adjd to Nov. 9, 1972 at 10:00 am.

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CRIMINAL DOCKET

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DATE	PROCEEDINGS
11-9-72	Before TRAVIA J - Case called - Deft & counsel present (Fernandez) Trial resumed - Trial continued to Nov. 10, 1972 at 10:00 am.
11-10-72	Before TRAVIA J - Case called - Deft & counsel present - Defts motion on question of arrest of deft - defts motion on question of arrest, etc. Motion denied - trial continued to Nov. 13, 1972.
11-13-72	Before TRAVIA J - Case called - Deft & counsel present - trial resumed - Trial continued to Nov. 14, 1972.
11-14-72	Before TRAVIA, J. - Case called. Deft FERNANDEZ & counsel Eleanor Jackson Piel present. Trial resumed. Two newspaper clippings dated 11-11-72 marked courts exhibit #18 ordered sealed by the Court. Trial continued to November 15, 1972, at 10 A.M.
11-15-72	Before TRAVIA, J, - Case called. Deft FERNANDEZ & counsel Ms. Piel present. Trial resumed. Govt rests. Deft's motion for a mistrial. Motion denied. Deft motion moves for a dismissal as govt has failed to make out a prima facia case. Motion denied. Trial continued to November 16, 1972, at 10 A.M.
11-16-72	Before TRAVIA, J. - Case called. Deft FERNANDEZ & counsel Ms. Piel present. Trial resumed. Trial continued to 11-17-72 at 10 A.M.
11-17-72	Writ returned and filed - Not Served ^{witness} deft Moody not at Federal Reformatory, "Petersburg, Va.
11-17-72	Writ returned and filed -Not Served_ witness Johnny Sellers not at U.S.Penit. Milan, Michigan.
11-17-72	Before TRAVIA J - Case called - Deft & counsel present - trial resumed - Trial continued to Nov. 20, 1972 at 10:30 am.
11/22/72	Before TRAVIA, J.- Case called -Deft and counsel present-Trial re- sumed. Defts Motion for a mistrial,etc.-Motion denied. Govt's motion to reopen case -granted. Defts Motion to reopen-granted. Trial continued to Nov. 21, 1972 at 10:00 A.M.
11/21/72	Before Travia,J.-Case called-Trial resumed-Both sides rest- Defts' motions for judgment of acquittal & mistrial denied- Trial cont'd to 11/22/72
11/24/72	Writ returned and filed/ Not executed(Deft (FRED FERNANDEZ)
11-22-72	Before TRAVIA J - Case called - Deft FERNANDEZ & counsel present - Trial resumed - Court charges Jury at 9:50 am to 11:15 am - Alternate Jurors discharged - Order of Sustenance signed for Lunch. Jury renders a verdict of guilty at 5:20 PM and find the deft guilty as to counts 1 and 2 - Jury polled and Jury discharged.

DATE	PROCEEDINGS
	deft moves to set aside the verdict - Motion denied - deft sentenced to imprisonment for 20 years on count 1 and 20 years on count 2 - sentence on count 2 to run concurrently with sentence imposed in count 1 - Mrs Piel is appointed to handle appeal - court directed the Clerk to file Notice of Appeal ^{without fee} / Bail revoked - trial concluded.
11-22-72	By Travia J -Order of sustenance filed (lunch - 14 persons)
11-22-72	Judgment and Commitment filed - certified copies to Marshal.
11-22-72	Notice of Appeal filed without fee (FERNANDEZ)
11-22-72	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals (FERNANDEZ)
11/27/72	Certified copy of judgment and commitment returned and filed/Executed (deft-FRED FERNANDEZ) Deft delivered to Fed. Det. Hdqs.
11-28-72	Stenographers transcript dated 7-7-72 filed (Fernandez)
11/29/72	Notice of Appeal in forma pauperis filed by Eleanor Jackson Piel.
12/6/72	Writ of Habeas Corpus Ad Testificandum ret. and filed/Executed (for deft FRED FERNANDEZ)
12/12/72	Order filed and recd from the C. of A. that the record be docketed on or before 12/18/72.
12-13-72	Voucher for Expert Services filed (Fred Fernandez CJA #21)
12-13-72	Record on Appeal certified and mailed to the C of A (Fernandez)
12/15/72	Stenographer's transcripts of November 8-10, 1972 filed.
12/15/72	Stenographer's transcripts of November 13-17, 1972 filed.
12/15/72	Stenographer's transcripts of November 20-22, 1972 filed.
12/15/72	Stenographer's transcripts of 4/14/72 and 5/18/72 filed.
12/27/72	<i>Acknowledgment recd & filed from the C of A for receipt of Index to Record on Appeal.</i>
1/3/73	Voucher for compensation filed (atty Eleanor Jackson Piel)
1/31/73	Stenographer's transcript of 5/18/72 filed.
2/20/73	Supplemental Index to Record on Appeal filed.
2-1-73	Stenographers transcript filed dated Oct. 24, 1972 (forwarded from the office of Eleanor Jackson Piel and missing from previous supplemental Index to Record on Appeal forwarded to C of A on 2-20-73)
3-1-72	Transcript forwarded (of Oct. 24, 1972) to the C of A (Fernandez)
3/1/73	Acknowledgment recd and filed from the C. of A. for receipt of Suppl. Index.
3/7/73	Acknowledgment recd and filed from the C of A for receipt of suppl in

DATE	PROCEEDINGS
3-23-73	Judgment received from the C of A filed that by notice of motion dated March 13, 1973 for an order directing the Clerk of the U.S. District Court for the Eastern District of N.Y. to transmit and delivery forthwith certain documents or, in the alternative, all exhibits to the Clerk of the C of A is granted on the basis that all exhibits shall be transmitted.
5/30/83	Acknowledgment mailed to the C. of A. for recpt of Index and Supplemental Index (and filed)
8-26-73	Certified copy of Opinion and Judgment received from the Court of Appeals filed reversing judgment of this court for a new trial in accordance with the opinion of the Court of Appeals. (deft FRED FERNANDEZ)
6/28/73	By WEINSTEIN, J.- Order filed, that this case shall be pre-tried on 7/13/73
7/9/73	Affidavit of J. Reide and H. Howard filed.
7/11/73	Notice of Motion filed, ret. 7/13/73 re: To dismiss the indictment (FERNANDEZ)
7/12/73	Affidavit of defts REIDE and HOWARD filed.
7/12/73	By WEINSTEIN, J.- Memorandum and Order filed, denying defts motion to not have to give testimony in the Eastern District of New York Defts and U.S. Atty sent copies of Memorandum and Affidavit.
7/13/73	Before WEINSTEIN, J.- Case called- Motion to dismiss the indictment- Govt to submit answering papers-Deft to be turned over to State custody-Trial set for Dec. 3, 1973 at 10:00 A.M.
7/13/73	By WEINSTEIN, J.- Order appointing counsel filed. (deft FERNANDEZ)
7-17-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed. (FERNANDEZ)
7-17-73	By MISHLER, CH J - Writ Issued, ret. July 23, 1973 "
8/1/73	Letter of 7/24/73 received from Chambers from Sanford Katz esq. re: Deft Horsun Howard, etc.
8/1/73	By WEINSTEIN, J.- Order of 7/24/73 filed (SEE ENDORSEMENT ON FRONT OF LETTER) (As directed copies sent to AUSA Stechel and Sanford Katz esq.)
8/6/73	Writ retd and filed. Executed. (F. FERNANDEZ)
8/8/73	Letter from chambers dated 8/7/73 from Eleanor Jackson Piel, filed re: response to the motion and allegations of counsel's affidavit (FERNANDEZ)
8/8/73	By WEINSTEIN- Order filed, that AUSA should make a prompt response to motion (copies sent to AUSA Stechel and counsel)

DATE	PROCEEDINGS
9/1/73	with letter from counsel By WEINSTEIN, J.- Order filed that a response from the U.S. Attorney would be appreciated (parties notified as ordered)
9-10-73	Notice of Motion filed, ret. Sept. 26, 1973 at 9:30 am, for dismissal of the Indictment (Fred Fernandez) with affidavit etc.
9/11/73	Letter from chambers filed from AUSA Stechel dated 8/13/73
9-21-73	Affidavit of Howard J. Stechel filed.
9-26-73	Before WEINSTEIN J - Case called on motion for dismissal of the Indictment as to deft FERNANDEZ - motion argued and denied - defts motion for copy of these minutes and for the 13th of July is granted in forma pauperis.
10-2-73	Stenographers transcript dated 9-26-73 filed.
10-3-73	Copy of letter of Sept. 27, 1973 filed re deft Fernandez from counsel for the deft. Eleanor Jackson Piel (received from Chambers)
10/3/73	Before WEINSTEIN, J.- Case called-Deft and counsel present- Govt's application for bail is granted- Bail set at \$10,000 P.B.- to be executed by deft's mother and father ^{plus} their house and \$500.00 cash to be put up for security (FERNANDEZ)
10-4-73	Voucher for Expert Services filed (Fernandez)(criminal motion to dismiss) ^{re}
10/10/73	Stenographers Transcript dated 7/13/73 filed
10-11-73	Voucher for Expert Services filed (Fernandez)
10-11-73	<i>Transcript 7/13/73 re Fernandez</i>
10-16-73	Affidavit of PETER SCHLAM & HOWARD STECHEL filed.
10-17-73	Memorandum filed dated Oct. 16, 1973 from Judge Weinstein to Hon. Robert Morse, US Atty etc. (received from Chambers)
10-24-73	Voucher for Expert Services filed (Fred Fernandez)motion for hearing on charges)
10-25-73	Letter of Oct. 24, 1973 filed from Robert Morse, U.S. Atty. to Judge Weinstein & copy thereof (received from Chambers) ^{re requests for specific items by M}
10-25-73	By Weinstein J - (see entry on 2nd page of letter of Judge Weinstein) Counsel should attempt to resolve differences without the Court's intervention. Should this move impossible, a hearing will be arranged at the request of any party. The Trial is set for Dec. 3, 1973. Parties notified/
10-31-73	Letter dated Oct 29, 1973 from Judge Weinstein to Eleanor Jackson Piel counsel for deft Fernandez for appt set for Oct. 31, 1973 at 4:00 PM etc
11-16-73	Before WEINSTEIN, J.- Case called- Deft and counsel present- Pre-trial conference and hearing on exhibits and rulings, etc. held and concluded

DATE	PROCEEDINGS
	Wade Hearing to be held on 12-3-73- Hearing set for 11-27-73 to determine govt's information as to press reports
11-16-73	Stenographers Transcript dated 11-9-73 filed
11-16-73	Voucher for expert services filed (FERNANDEZ)
11-16-73	Affidavit of William Vandivert filed
11-16-73	Letter to chambers from E.J. Piel, esq. dated 11-15-73 filed (re: Fernandez)
11-26-73	Affidavit of Eleanor Jackson Piel filed (received from Chambers) re deft FERNANDEZ.
11-26-73	Before WEINSTEIN J - Case called - deft Fernandez not present - counsel Eleanor Jackson Piel present - defts motion as to clarification of exhibits - counsel for deft has taken film marked Ex.#V in the last trial and exhibits 51-54 & 55. So Ordered.
11-27-73	Before WEINSTEIN, J.- Case called- Deft and counsel present- Deft's motion to determine illegal techniques, etc. - Hearing contd to 11 (FERNANDEZ)
11-28-73	Before WEINSTEIN J - Case called - deft Fernandez & counsel Eleanor Piel present - Hearing resumed - Dept. Clerk of the Court is ordered to photostat part of Court Ex.#1 -sealed file containing F.B.I. reports and provide copies for Govt and defense counsel as indicated by the Court - Hearing continued to Nov. 30, 1973.
11-29-73	Letter filed dated Nov. 29, 1973 received from Chambers from Asst Pattison, etc.
11-29-73	By WEINSTEIN J -Order stayed pending argument on 11-30-73.
11-30-73	Before WEINSTEIN J - Case called - deft FERNANDEZ & counsel Eleanor Jackson Piel present - hearing contd - Exhibits E, 6 and V (film returned by Miss Piel and turned over to Thomas Pattison, AUS. Exhibits 51, 54 & 55 returned back to the Clerk. Motion by Police Dept. to quash subpoena (motion made by Patrick C.Healy)Govt joins in motion - Decision Reserved - 2 documents pgs 45 and 46 marked as Court Ex. 1C and ordered sealed - Police File marked as Court Ex.#2 and ordered sealed - hearing continued to Dec. 3, 1973.
11-30-73	Letter dated Nov. 30, filed received from Chambers from Asst US Atty Pattison to Judge Weinstein, etc.
11-30-73	By WEINSTEIN J - Court's order is stayed until Dec. 3, 1973. Clerk to inform the parties. So Ordered.
11-30-73	By CATOGGIO, Magistrate - Order for acceptance of cash bail filed (FRED FERNANDEZ)

DATE	PROCEEDINGS
12-3-73	Before WEINSTEIN, J. - Case called - Deft and counsel present - Police
	Files returned byack to Officer Healey previously marked as court exhibit 2 on 11-30-73-letter by E.J. Piel, counsel for deft for dismissal of the indictment is marked as court exhibit 1 and filed - Hearing is denied at this time - Trial set for 12-5-73 at 2:00 P.M. (FERNANDEZ)
12-3-73	Before WEINSTEIN J - Case called - deft Fernandez not present - counsel Eleanor J. Piel present - Govts application to increase the bail of the deft argued and denied - Oral application by deft for a Writ of Habeas Corpus is granted - Govt refuses to turn over Court Ex. 1C pgs 45 and 46 - defts motion to dismiss the Indictment is granted - Order of Dismissal is stayed until Dec. 4, 1973 at 10:00 A.M.
12-4-73	By WEINSTEIN J - Order of dismissal filed (FERNANDEZ)
12-4-73	Writ ret'd and filed - Executed (FERNANDEZ)
12-4-73	Before WEINSTEIN, J. - Case called - Deft and counsel present - Govt's motion to reconsider as to the turning over of pages 45 and 46 denied - Deft's motion to dismiss the indictment granted - Bail exonerated
12-7-73	By WEINSTEIN, J. - Order releasing bail filed (FERNANDEZ)
12-11-73	Stenographers transcript filed dated Nov. 30, 1973 (FERNANDEZ)
12-11-73	Stenographers Transcript date 11-28-73 filed
12-12-73	Voucher for compensation forwarded to Court of Appeals for approval (over the amount etc) deft FERNANDEZ.
12-14-73	Stenographers Transcript dated 11-16-73 filed
12-18-73	Voucher for expert services filed and Memo from Judge Weinstein filed (voucher forwarded to Chief Judge Kaufman for approval)
1-2-74	Govt's notice of appeal from the order of District Court dismissing the indictment against deft Fernandez filed
1-2-74	Docket entries and duplicate of notice of appeal sent to Court of Appeals (FERNANDEZ)
1-9-74	Voucher for Expert Services filed (Minutes furnished to Eleanor J. Piel)
1-11-74	Stenographers Transcript dated 12-3-73 and 12-4-73 filed
1-16-74	Voucher for Expert Services filed (Wm. Vandivert, etc.)
1-16-74	Voucher for Expert Services filed (E.J. Piel)
1-29-74	Letter from A.U.S.A. Pattison to chambers filed Re: cover letter accompanying sealed exhibit which is being submitted pursuant to Judge Weinstein's ruling of 12-4-74, etc. - Sealed exhibit filed
1-29-74	By WEINSTEIN, J. - Order filed that after having examined and reviewed sealed exhibit the Clerk will keep it sealed and forward it to the Court of Appeals at the appropriate time (order on bottom of above letter)

*Jail 16
Negroes
In Plot
To Kill
Roy Wilkins*

New York Post, June 21, 1967, p. 1

EXHIBIT A

Nab 16 Negroes in Plot to Kill Wilkins

By VINCENT D. AUSTIN and WILLIAM H. RUDY

Sixteen Negroes described as members of an anarchist black power group were rounded up in early-morning raids here today and charged with plotting to kill Roy Wilkins, NAACP executive director.

The 12 men and four women were said to be members of the Revolutionary Action Movement, known as RAM, a group described in testimony before Congress as plotting to overthrow the government.

Seized with the 16, according to Queens District Attorney Mackell, were 30 weapons, including a machine gun and a number of carbines and 1,000 rounds of ammunition.

Those arrested included the principal of a Queens public school, a Queens teacher, a Board of Education construction engineer, a Welfare Dept. clerk and a Transit Authority clerk.

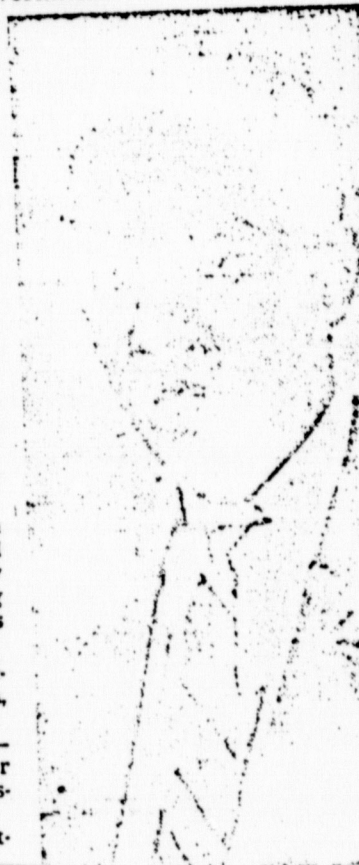
Two of the suspects were charged with six overt acts in the plot, including calls to Wilkins' office to determine his movements, the planning of a getaway route from Wilkins' Queens residence and the purchase of weapons.

The arrests were made in raids in Queens, Manhattan and Brooklyn by 100 police, many of whom had been working undercover for several months on the case.

A large number of the detectives, including five women, were Negroes.

Explosives and pamphlets—one reading: "Move over—or I'll move you"—were confiscated.

The DA's office said indict-



tain its goals."

He said that Stokely Carmichael, a leading Black Power advocate, had connections with RAM, which was "dedicated to the overthrow of the capitalist system in the U. S. by violence if necessary." Carmichael has not commented on the charge.

Carmichael, the day after Hoover's testimony was released, refused to confirm or deny the charges that he was linked with the movement.

"Just let J. Edgar Notetaker prove them," he said. "I'm not going to discuss them."

RAM first came to public attention in 1964. Its aims have been described as the building of armed defense units to defend slum strong points, the selective assassination of white and Negro leaders, and the promotion of guerrillawarfare.

Foes of King

It was reported to have been influential in organizing the Chicago slum riots last summer. At that time it was engaged in an ideological tug of war with the Rev. Dr. Martin Luther King's advocates of nonviolent methods.

RAM was believed to be influenced by Robert F. Williams, a

ments named:

Herman B. Ferguson, 47, of 129-39 157th St., Jamaica, Queens, assistant principal of PS 45, Jamaica.
 Marie Stewart, 47, of 111-29 179th Pl., St. Albans, Queens, a management analyst for the Navy.
 Arthur Morris, 27, of 122-28 132d St., Jamaica, no occupation.
 Milton C. Ellis, 33, of 17-09 107th Av., Queens, a mechanic.
 Maxwell Sanford, 24, of 738 Esplanade Av., The Bronx, no occupation.
 Abraham C. Taylor, 40, of 97-26 Northern Blvd., Queens, an art gallery helper.
 Raymond Smith, 33-21 106th St., Queens, no occupation.
 Fred Fernandez, 33, of 94-17 32d Av.,

STOKELY CARMICHAEL

Queens, no occupation.
 Hamilton W. Rockard, 29, of 8 Stanhope St., Brooklyn, a construction engineer for the Board of Education.
 Ursula V. West, 25, of 195 Willoughby St., Brooklyn, no occupation.
 Harriet Noel, 25, of 1070 Anderson Av., The Bronx, no occupation.
 Al Haynes, 43, of 8 Raleigh Av., Roosevelt, L. I., a mechanic.
 George Samuels, 40, of 125-03 New York Blvd., a Transit Authority clerk.
 Marika Kaurouma, 24, of 25 W. 132d St., an exchange student.
 Michele Kaurouma, 24, of 25 W. 132d St.
 Mandela G. McPherson, 20-04 120th Av., Jamaica, a Welfare Dept. clerk.

Mackell said the indictments were handed up yesterday by a Queens grand jury. They charge conspiracy to commit homicide, arson and anarchy.

In Congressional testimony made public a month ago, FBI Director Hoover called RAM "a highly-secret all-Negro, Marxist-Leninist, Chinese Communist-oriented organization which advocates guerrilla warfare to ob-

former volunteer official who fled to Cuba in 1961 to escape a kidnaping charge. He is reported to be living now in China or North Vietnam.

News stories in 1965 linked the movement with the assassination of Malcolm X, the dissident Black Muslim leader. At that time its headquarters was said to be in Philadelphia, with the movement also strong in Harlem, Chicago, Detroit and Cleveland.

Black Panther Party

Hoover, in his report to Congress, said Carmichael had been in frequent touch with a Max Stanford, identified as RAM's field chairman.

Hoover said that Carmichael had "afforded Stanford assistance and guidance in forming a Black Panther party in New York City."

LONG
ISLAND
FINAL

DAILY NEWS

NEW YORK'S PICTURE NEWSPAPER ®

8¢
ACTION LINE
Is on Page 47

Vol. 43. No. 310

Copyright 1967 News Syndicate Co., Inc.

New York, N.Y. 10017, Thursday, June 22, 1967*

WEATHER: Mostly cloudy, showers.

RIGHTS MURDER PLOT JAILS 16

Targets: Wilkins and Young

Stories on page 3

New York Daily News, June 22, 1967, p. 1

EXHIBIT

B

Nab 16 in Death Plot On Negro Moderates

By THOMAS PUGH, GERALD KESSLER and HENRY LEE

A plot by Negro extremists to assassinate Roy Wilkins, Whitney Young Jr. and other moderates in the civil rights movements—as well as to strike terror by gasoline and gunpowder—has been frustrated with the arrest of 16 persons, four of them city employees, authorities asserted yesterday.

The dozen men and four women, seized in predawn raids here and in Philadelphia, included an assistant principal, a teacher and a custodian-engineer in the Board of Education and a Welfare Department clerk.

Also bagged were a former Navy civilian employee who had security clearance, and an \$85-a-week group leader in charge of 20 boys aged 16 to 21 for the Manpower Development Board.

All 16 were described as members of the Revolutionary Action Movement, known as RAM, which reportedly seeks to "seize power in the United States and throughout the world by violence and assassination."

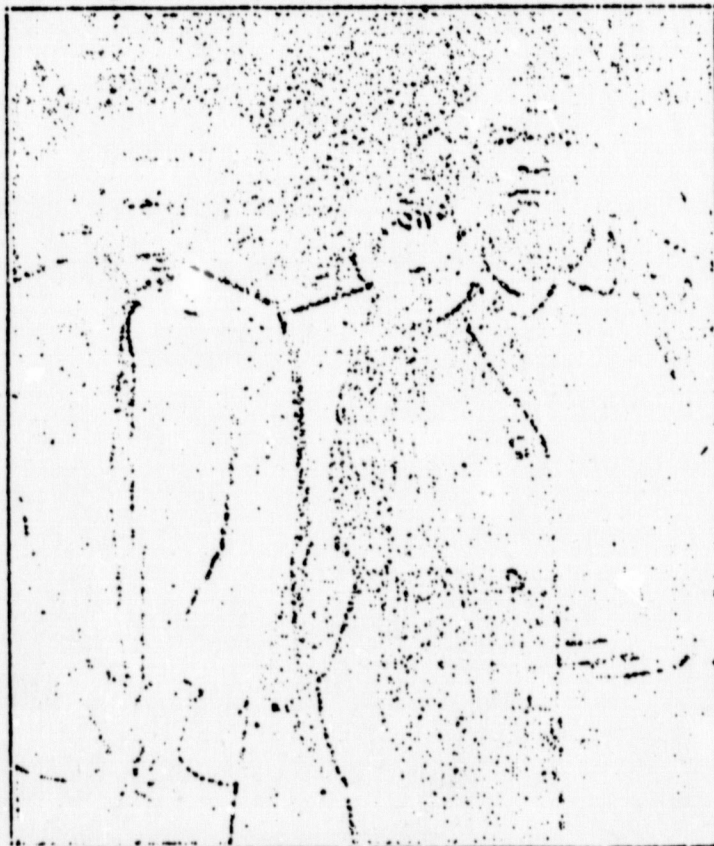
Late yesterday afternoon, the 15 arrested here were held in bail totaling \$207,500 by Queens Supreme Court Justice Anthony Livoti for hearings tomorrow. The individual bail ranged from \$40,000 down to \$2,500.

According to court affidavits submitted by police, the little terrorist band, believed masterminded from Communist China, "teaches, advocates, advises and plans, by writing and word of mouth, the murder of various members of the Negro race whom it considers to be in opposition to its own principles."

More than 150 policemen took part in the roundup, along with members of the staff of Queens District Attorney Thomas MacKell. They reported seizing more than 30 weapons, including a machine gun, several carbines, at least a dozen rifles, some with telescopic sights, a machete, several daggers, blackjacks, a slingshot and a few arrows without any bow.

Also confiscated were explosives, more than 1,000 rounds of ammunition, police-type riot hel-

(Continued on page 4, col. 1)



Prisoners Herman Ferguson (left), an assistant school principal, and Raymond Smith enter Queens police station.

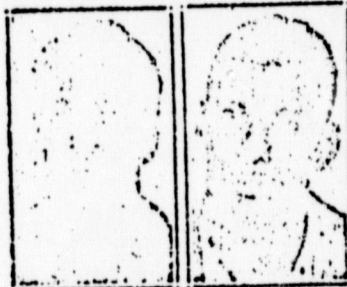
16 Arrested in Civil Rights Assassination Plot

(Continued from page 3)

metas, binoculars, walkie-talkies, plastic gasoline cans filled with fluid—and almost 275 packets of heroin.

The spectacular series of arrests followed an abortive attempt in March by RAM members to assassinate Wilkins, executive director of the National Association for the Advancement of Colored People, authorities said.

In addition to Wilkins and Young, who is director of the National Urban League, Chief Inspector Sanford Garelik said.



Hampton W. Rockard
Fred Fernandez
Suspects seized in plot

the plot was directed against "other outstanding Negro leaders," and District Attorney Mackell added:

"They intended the assassination not only of Negro leaders, but white leaders, too."

None of the other intended victims was identified, but Mackell emphasized that "by no means have we cleaned up the whole movement."

The assistant school principal, Herman Benjamin Ferguson, 46, of PS 40 in Jamaica, and Arthur Harris, 22, of Jamaica, who has no occupation, were accused of first degree murder conspiracy against the civil rights leaders.

The pair were held in \$40,000 bail each, and Chief Assistant District Attorney Frederick J. Ludwig said in court that Ferguson's home alone had yielded 10 rifles, one an automatic that could be used as a machine gun, also three carbines, one shotgun, four

knives and three foot-long metal arrows.

Beginning last Nov. 3, they assertedly started making phone calls to Wilkins and Young, seeking to ascertain their itineraries and planned activities. They are accused also of having mapped out routes to the homes of both men and of having bought pistols.

In addition to this six-count indictment against Ferguson and Harris alone, a second indictment accuses all 16 of advising and conspiring to advocate criminal anarchy. Several were charged also with conspiring to commit arson and unlawful possession of dangerous weapons.

The anarchy-conspiracy indictment accuses the 16 of acting in concert to organize the Jamaica Rifle and Pistol Club Dec. 9, 1965, as a front to obtain weapons and attending classes in aikido, described as "a form of karate and mayhem."

Additionally, the charges related, they collected rifles, shotguns and pistols, practiced target shooting in state armories in Brooklyn, Queens and Nassau and obtained pipes and gunpowder for making bombs.

According to Mackell, the headquarters of the group was in the basement of a delicatessen at 120-03 New York Blvd., Jamaica, owned by George Samuels. Samuels, 40, who gave that address, is one of those arrested.

Linked to Another Group

Mackell acknowledged that much of the evidence on which the indictments were based had come from police, undercover agents, and Chief Inspector Garelik said, "We were on top of it."

Both the Queens DA and the police were intensifying their investigation, and Mackell said "there might be some surprises" in his continuing probe.

Authorities said that RAM—whose slogan is "Kill, baby, kill"—follows the hard Communist line of Chinese Chairman Mao Tse-tung and is associated with another fanatic Negro group, Black Americans Unite or Fetish, headed by Robert Williams, a



Michelle Kaurouma
Among the suspects

former NAACP official fired by Wilkins.

Six years ago, when he was charged with kidnaping a white couple during a racial disturbance in North Carolina, Williams fled to Cuba and later is believed to have transferred to Communist China.

From Cuba, police said, he broadened "revolutionary and anti-American propaganda," and from both countries he sent his publication, the Crusader, to the U.S.

RAM membership has been estimated at about 1,000, with many more sympathizers, chiefly in the Negro big city ghettos, and there were reports the outfit had a hand in the 1964 Harlem riots.

The Car Got Away

Mackell said that an informant had warned on March 8 of an assassination attempt against Wilkins. A carload of heavily armed RAM members were reported en route to his home in Queens.

However, Wilkins was not home at the time, and the car, reportedly bearing Michigan license plates, escaped a police search.

In Congressional testimony, FBI Director J. Edgar Hoover recently tabbed Ram as "a highly-

secret all-Negro, Marxist-Leninist, Chinese Communist-oriented organization which advocates guerrilla warfare to obtain its goals."

Hoover charged that Stokely Carmichael, a leading black power figure, had connections with Ram, and that Carmichael had given "assistance and guidance" to a Max Stanford, identified as Ram's field chairman, in forming a Black Panther Party in New York City.

One of those arrested yesterday was Maxwell Stanford, 25, who was nabbed in a North Philadelphia Negro neighborhood.

At the arraignment in Queens, authorities disclosed that one de-



Mandola McPherson
Ursula West
School staffer & welfare aid

fendant, Mariki Kaurouma, 25, is an exchange student from Koule, Guinea, now attending New York University. He and his wife, Michelle, 24, described as an American Negro, were held in \$2,500 each.

The teacher, Ursula Virginia West, 27, and the school custodian, Hampton W. Rockard, 38, are both on the staff of PS 24 in Brooklyn, it was also disclosed. Miss West was held in \$5,000 and Rockard in \$10,000.

Another defendant, Raymond Smith, who was held in \$10,000 bail, was described by his Legal Aid Society attorney as an employee of JOIN (Job Orientation in Neighborhoods), an anti-poverty agency receiving federal funds.

3 NAMES ADDED AS PLOT TARGETS

**Mackell Says Negro Group
Planned Other Killings**

By McCANDLISH PHILLIPS

The names of three more persons said to have been marked for assassination by an alleged ring of middle-class Negro revolutionaries were turned over to the Federal Bureau of Investigation yesterday by Queens District Attorney Thomas J. Mackell.

The action was taken, Mr. Mackell's office said, after the White House had called the F. B. I. office in New York to inquire about the other names reportedly on the revolutionary group's selective assassination list.

The office refused to identify the three, but James Farmer, former national director of the Congress of Racial Equality, said yesterday that he had been told two years ago by the city Police Department that he was on a list of moderate civil rights leaders to be killed by the Revolutionary Action Movement.

Twelve men and four women, said to be members of the group, were arrested Wednesday in pre-dawn raids carried out by 150 policemen.

Conspiracy Is Charged

They were arrested on indictments handed up in a 12-hour session of the Queens grand jury, ending late Tuesday night. All 15 were charged with conspiracy to advocate criminal anarchy. Two men were accused of conspiracy to commit murder.

The two were said to have plotted the assassination of Roy Wilkins, executive director of the National Association for the Advancement of Colored People, and Whitney Young, executive director of the National Urban League.

The police had begun their investigation and surveillance of RAM members in July, 1965. Undercover agents had infiltrated the movement and had obtained information from within. It was learned yesterday.

Mr. Farmer said that he had been informed of the investigation of RAM when it was begun by the police and had been told he was on the assassination list. He was interviewed before a speaking engagement at the State University's Agricultural and Technical Institute in Farmingdale, L.I.

"This shows that we are not equal now," Mr. Farmer told 200 predominantly white students. "You've got your Minutemen, and we've got our RAM."

"Even black nationalists in the land would reject them," he continued. "The late Malcolm X would reject them." Mr. Farmer explained that Malcolm's posi-

tion had been to debate and challenge other civil rights leaders, but, in the end, he would still have regarded them as his brothers.

The Minutemen, a militant right-wing extremist organization, was in the news here last fall when the police made a series of early morning raids, arresting 19 men and confiscating a rich trove of weapons.

In Wednesday's raids, the police said they seized 56 weapons, including rifles, shotguns, carbines and 1,600 rounds of ammunition, and 150 bags of heroin.

Also collected, the police said, were six "fair-sized" cardboard boxes of handbills, magazines and other literature, much of it allegedly following a Black-oriented political line. The material was also said to have included instructions on how to pull down high-tension wires, how to make Molotov cocktails and how to use a hatchet to kill a man.

The New York Civil Liberties Union accused Mr. Mackell and the police of conducting a "trial by publicity" in announcing the arrests. "Evidence that may or may not be admissible in court," its statement said, "has been freely reported in an apparent effort to create an incredible impression of guilt in the minds of potential jurors."

"No time had been set" for assassination, Mr. Mackell's office said in reply to a report in The New York Post that this weekend had been chosen for the attempts to slay Mr. Young and Mr. Wilkins.

Mr. Mackell was conferring with two F.B.I. agents and the city police yesterday morning when a call came informing him that the White House had inquired about other persons allegedly marked for murder. The three names supplied to the F.B.I. did not include anyone in the White House, he said.

Mr. Mackell's office said it had learned that the suspect arrested in Philadelphia, Maxwell Stanford, 31 years old, had been held in \$100,000 bail and faced extradition to New York.

The F.B.I. has described Stanford as the national leader of the small revolutionary group.

The suspects are scheduled to appear for a hearing this morning in Queens Supreme Court.

8 Seized in Philadelphia

PHILADELPHIA, June 22 (AP)—The police said today that they had taken into custody eight persons whom they identified as members of the Revolutionary Action Movement. The arrests followed two separate police raids on reputed RAM headquarters.

The police said they believed some of those accused were students at Howard University in Washington.

Of the eight, three were released, four charged with vagrancy and subsequently released, and one held on a charge of carrying a concealed deadly weapon, a knife.

The New York Times,
June 23, 1967, p. 5 EXHIBIT

White House, FBI Ask Mackell for Details on RAM

By HAL SHAPIRO

"Washington calling!"

Twice, this message was handed to Queens Dist. Atty. Thomas J. Mackell yesterday.

"The first time it was the White House," Mackell said. "A presidential aide wanted to know the names of the intended victims in the murder plot by RAM (Revolutionary Action Movement)."

"The second call came from FBI headquarters . . . and they, too, were anxious to know about the activities of RAM."

The district attorney said there are no further arrests imminent on Long Island.

HE DESCRIBED the 16 arrested Wednesday on charges including conspiracy to commit murder, criminal anarchy, conspiracy to commit arson and violation of the weapons law, as members of a group which preached the overthrow of our government and the assassination of executives.

"They are unlike the Minutemen who wanted only to destroy those they termed as 'bad' guys. They were opposed to evil influences outside of government, while RAM advocates the violent overthrow of the existing government."

Mackell indicated RAM

3 More Held In Philadelphia

PHILADELPHIA (AP)—Police said yesterday they have taken into custody eight more persons identified as members of the Revolutionary Action Movement RAM, an extremist Negro group allegedly bent on assassinating moderate civil rights leaders.

The arrests followed two separate police raids on reputed RAM headquarters.

Police said they believe some of them are students at Howard University in Washington, D. C., a Negro school.

Of the eight, three were released, four charged with vagrancy and subsequently released and one held on a charge of carrying a concealed deadly weapon, a knife.

members had actually pinpointed their targets on a map.

"They were going to fire

(Turn to Page 3)

White House, FBI Ask DA About RAM

(Continued from Page 1)
up a lumber yard and gasoline stations in the Jamaica-South Ozone Park areas and a tire firm in Flushing," the DA said.

"They planned to take over several gas stations and pour gasoline into the sewer lines leading into subway stations and set them ablaze. You can imagine the havoc they could have created."

THE LEADER of the RAM group arrested on Wednesday is Maxwell Stanford, 25, of Philadelphia, according to the district attorney.

Stanford was arrested by Philadelphia police and two members of the Queens DA's squad. He is being held in \$10,000 bail awaiting extradition to New York.

"I would say that his adjutant was Herman Ferguson, the assistant principal at P.S. 40 in Jamaica," Mackell continued. "Ferguson was one of the activists when the Rochdale demonstrations ended."

"He led a selective buying campaign in Jamaica and would have begun a boycott of Jamaica Avenue stores if he had gotten enough support."

"He was a prime mover with RAM, and with him in custody we feel that we have forestalled any riots which might erupt in this area this summer."

Ferguson, 46, of 129-39 157th St., Jamaica, and 22-year-old Arthur Harris of 122-08 153rd St., Jamaica, are charged with conspiracy to commit murder by assassinating Wilkins and Young.

THEY, and the other defendants, appear in Kew Gardens Supreme Court today before Justice Anthony M. Livoli.

Five of the defendants

were released on bail to await today's action.

They are Milton Clarence Ellis, 32, of 170-09 107th Ave., Jamaica, a mechanic; Hampton W. Rookard, 38, of 8 Stanhope St., Brooklyn, a custodial engineer at P.S. 283, Brooklyn; Ursula V. West, 27, of 155 Willoughby St., Brooklyn, a teacher at P.S. 283; Mariki Kaurouma, 21, and his wife, Michelle, both of Manhattan. Kaurouma is an exchange student at New York University from Kottis, Guinea.

The New York City Board of Education announced yesterday it is suspending without pay all of its employees involved in the RAM arrests. Those include Ferguson, Rookard, Miss West and Mrs. Kaurouma.

The board said Mrs. Kaurouma was appointed as a teacher at P.S. 100, Manhattan, Sept. 2, 1964.

THE OTHERS who appear in court today are:

Marie Stewart, 46, of 111-29 179th Place, St. Albans, management analyst officer, the United States Medical Supply Center, Brooklyn; Fred Fernandez, 23, of 94-17 32nd Ave., Corona, Manpower Development Board group leader; Raymond Smith of 35-22 108th St., Corona; Mandela G. McPherson, 38, of 260-05 120th Ave., Springfield Gardens; Abraham C. Taylor, 39, of 97-06 Northern Blvd., Corona, helper in an art gallery; Harriet Noel, 26, of the Bronx; Al Haynes, 42, of 6 Balhigh Ave., Roosevelt, mechanic for Fairchild Aviation, and George Samuels, 49, of Manhattan, owner of a grocery store at 120-01 New York Blvd., Jamaica.

Mackell said Samuels' grocery store was the headquarters for the group, which had organized as the Jamaica Rifle and Pistol Club.

"They met in the store at

least once a week," the DA asserted, "and they had something going just about every night of the week. We're grateful that we were able to round them up."

The district attorney explained that his office became involved in the case last March after Chief of Detectives Frederick Lunsen and Deputy Insp. William E. Knapp of the Bureau of Special Services informed him that RAM was operating in Queens.

THE POLICE investigation into this matter dates back two years," Mackell declared. "I have had Asst. DA Thomas Donkers of Jackson Heights on the case ever since we were informed about it."

"He and Lt. James Murphy of my squad have been working together on it. Donkers had to do a tremendous amount of reading and had to digest hundreds of thousands of words before we felt we were ready to proceed."

"We decided about a week ago to present our information to the regular June grand jury. And on Tuesday there was the presentation. The grand jury was in session from 9:30 a.m. until 9:30 p.m. before handing up the indictment against 16 people—12 men and four women."

Mackell said that the acts of terrorism, including the assassinations of Ray Wilkins of Jamaica, executive director of the NAACP, and Whitney Young, executive director of the Urban League, were to begin sometime after May 13.

"We don't know the exact date," he said, "nor do we know why they selected May 13. We feel that we have arrested the real activists in this plot and we are hopeful it will dampen their future activities."

14 ARE ARRAIGNED IN MURDER PLOT

Pretrial Public Statements
Deplored by Defense

By THOMAS A. JOHNSON

Fourteen of the 17 Negroes who were indicted Tuesday on charges ranging from plotting to murder moderate Negro civil rights leaders to advocating anarchy were arraigned in Queens County Criminal Court yesterday.

Judge Anthony M. Livotti set July 19 for the filing of motions and said he would fix a trial date at that time.

The police have said the 17 were members of the Revolutionary Action Movement, described as a Negro extremist organization.

Of the 17 indicted, the alleged leader, Maxwell Stanford, was being held in Philadelphia; the lawyer for another did not show up for the arraignment proceedings, and the only one who has not been arrested, John Anderson, also known as John Shabazz, was called a fugitive from justice.

All were arrested, with the exception of Anderson, early Wednesday morning. Five have since been released on bail, but the others are still being held.

Attempts by defense lawyers yesterday failed to reduce the bail, which ranged from \$2,500 to \$10,000, and totaled \$207,500.

Spectators Applaud

A predominantly Negro group of spectators at the hearing remained quiet until one defense lawyer, George R. Spitz, urged Judge Livotti to order District Attorney Thomas J. Mackell to stop making public statements on the case for publication.

When he said, "It has already deprived them from getting a fair trial," the audience applauded loudly.

Judge Livotti warned against a further outburst, and told Assistant District Attorney Frederick Ludwig to ask Mr. Mackell to "restrain" from making more public statements.

Another defense attorney, former City Councilman Paul O'Dwyer, told newsmen after the hearing: "The air is polluted in this case throughout the nation. They would be unable to get a fair trial anywhere."

Militant Negroes Present

The law firm of Paul, Weiss, Rifkind & Garrison represents two of the accused, Mariki Kaurouma, 21 years old, an exchange student from Guinea, and his American-born wife, Michelle.

Spectators included several militant Negro activists. Some had brought their children to the hallways of the courthouse "to see American 'justice' in action," one young woman said.

The courtroom doors were locked for security reasons during the 45-minute session and detectives sat with reporters. There were no incidents.

One of the spectators was Charles Kenyatta, leader of a Harlem group of Negro militants called the Mau Mau. He told newsmen on the courthouse steps that the Negro would get his freedom only "with the barrel of a gun."

Asked if he had taught his followers that they should kill moderate Negro officials, whom he termed "Uncle Toms," Mr.

Kenyatta answered: "Destroy them!"

Another spectator was Mrs. Ernestine Gullishaw, whose son, Ernest, was acquitted of the charge of killing a youth during a riot in Brooklyn last year. She refused to talk about the RAM case, saying "I've had more than enough of that."

Among those indicted were an assistant junior high school principal, a teacher, a custodial engineer, a Department of Welfare clerk and a civilian management analyst for the Navy.

The police said they seized more than 30 weapons, more than 1,000 rounds of ammunition, explosive materials, narcotics and walkie-talkies when they made their early morning arrests on Wednesday. The police said the RAM organization had a Red Chinese orientation and sought the violent overthrow of the Government. The Federal Bureau of Investigation estimated the group's membership totaled 50 persons, although other estimates said it had 1,000 members.

QUEENS AIDE CITES 'BLACK WAR' PLAN

Tells High Court Militants
• Trained as Guerrillas

By RED P. GRAHAM

WASHINGTON, April 1—A band of black militants was poised to begin guerrilla warfare in New York City when its members were arrested in June, 1967, on charges of criminal anarchy, the Supreme Court was told today.

Two members of the group had already staged a "test run" by racing through the Jamaica section of Queens on the night of June 16, firing shots from a car into store windows, a Queens County legal official said during court arguments.

Frederick J. Ludwig, chief assistant district attorney in Queens, said, "Their plans were made. Their timetable was set. Weapons had been distributed—they were ready to go."

Law enforcement officials had infiltrated the group so thoroughly that a city detective was one of its vice presidents, Mr. Ludwig said. So when the group, which called itself the Revolutionary Action Movement, or RAM, reached this point of preparedness, 15 of its leaders were indicted on charges of criminal anarchy, he said.

Eleven of the arrested Negroes later filed suit in Federal District Court in New York to have the state's criminal anarchy law declared unconstitutional as an infringement on their freedom of speech.

Under the 1902 statute a person can be prosecuted for criminal anarchy if he "advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination or by any unlawful means."

A three-judge panel ruled last June that the law did not violate the four seventh guaran-

Summary of Supreme Court's Action

Special to The New York Times

WASHINGTON, April 1—The Supreme Court took the following actions today:

CIVIL RIGHTS

Agreed to decide if the Civil Rights Act of 1866 prevents some private clubs from refusing to admit Negroes to membership (No. 992, Sullivan v. Little Hunting Park).

CRIMINAL LAW

Ruled, 5 to 4, that when the police's manner of conducting a line-up is so unfair that a suspect's right to due process is violated, the witnesses' identification cannot be used in court against the suspect (No. 47 Foster v. California).

Dismissed the appeal of a

condemned Louisiana prisoner because his challenge to the constitutionality of a state law governing confessions had not been raised in the lower courts (No. 76, Cardinale v. Louisiana).

Let stand the one-year prison term of Lewis E. Wolfson, industrialist, who was convicted of violating the Securities Act of 1933 (No. 1057, Wolfson v. United States).

LABOR

Upheld, 7 to 1, the power of a union to fine members for exceeding work quotas set unilaterally by the union in the form of rules governing its members (No. 273, Geofield v. National Labor Relations Board).

Denied an appeal that challenged the constitutionality of New York State's Taylor

law, which prohibits strikes by public employees (No. 1029, DeLury v. City of New York).

MARITIME

Held unanimously that a stevedore company that has been required to pay compensation to one of its employees under the Longshoremen's and Harbor Workers' Compensation Act because of the negligence of the owner of the ship upon which the man was hurt, the stevedore company can recover the full amount paid out in a subrogation suit against the shipowner (No. 221, Federal Marine Terminals, Inc. v. Barnside Shipping Co.).

The proceedings of the Supreme Court yesterday appear in detail on Page 60.

tee of the First Amendment. The Supreme Court heard arguments today on the Negroes' appeal.

Mr. Ludwig attempted an unusual maneuver today in his effort to convince the justices that the militants' activities were "not advocacy of ideas or opinions—it was advocacy of detailed revolution." He offered to send to the bench the secret minutes of the grand jury session that led to the indictments on June 20, 1967.

However, he said that he was not permitted to show the minutes to the opposing counsel, and the justices made no move to look at them. Mr. Ludwig then gave a detailed statement of the evidence that he said they contained of the black militants' activities.

He said that several detectives began to infiltrate the group in 1965 and that they succeeded so well that they were able to give the grand jury details of the group's revolutionary training.

According to Mr. Ludwig this included techniques for making "Molotov cocktail" bombs with black powder and rubber tires, preventing police reconnais-

sance by igniting gasoline in the streets, disabling electric power facilities, fashioning homemade anti-tank grenades and mauling policemen with hatchet strokes.

The 15 defendants were arrested in a series of early morning raids in Brooklyn, Manhattan and Queens. Police officials said then that rifles, shotguns and more than 1,000 rounds of ammunition were seized. Mr. Ludwig told the justices today that 6,524 rounds of ammunition and 34 guns were seized.

When he was asked why his office did not concentrate on prosecuting the defendants on such substantive offenses as arson and weapons violations, Mr. Ludwig pointed out that two of them, Herman B. Ferguson and Arthur Harris, had been convicted of conspiring to murder two moderate civil rights leaders as part of the militant plot. The criminal anarchy prosecution has been postponed, pending the outcome of the case that was argued today.

Mrs. Eleanor Jackson Piel of New York, one of the attorneys for the Negroes, argued that the criminal anarchy law was an unconstitutional abridgment of the

past that had been dusted off "to try to prosecute the activities of black people who are advocating unpopular ideas."

'Test Run' Just Disheveled

A spokesman for Queens District Attorney Thomas J. Murphy said yesterday that the "test run" through Queens, weapons training and other alleged actions of black militants came to light only yesterday because they had not been listed in the criminal anarchy indictment.

"The indictment doesn't go into detail," the spokesman said.

The defendants moved quickly after the indictment was issued, he said, to have it set aside on the ground that the criminal anarchy law was unconstitutional.

This move prevented a trial from taking place until the constitutional issue was resolved.

Long Island Press

149th YEAR No. 292

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THURSDAY, OCTOBER 23, 1969 ★ ★ ★

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5 CENTS

Should the City Hire Ex-Convicts?

By IWEN ISLAE

Queens Dist. Atty. Thomas J. Mackell supports the idea of hiring young people with criminal records for the purpose of rehabilitation.

"I support such hiring," said Mackell yesterday, "provided that in the process these people will be able to learn a useful trade leading to steady and meaningful employment."

Mackell's position on the new controversy over such practice is in closer harmony with the views of Mayor Lindsay than with those of the Democratic candidate for mayor, Comptroller Mario Procaccino, whose candidacy Mackell has endorsed.

Mackell Backs Program, With Big 'If'

The prosecutor presently is investigating charges brought by Procaccino during a recent campaign debate that "hardened criminals and troublemakers" had been hired by the city to "keep them quiet."

Earlier this week, Procaccino personally handed Mackell a list containing 16 names, charging that those people on the list, many of them allegedly having criminal records, were hired in the summer of 1967 to work at anti-poverty programs in Corona.

"I am against paying people with criminal records, buying them off and keeping them quiet," Procaccino has maintained. "I'm for dealing with the responsible people of the neighborhoods, not the hoods or the punks."

Mayor Lindsay, who has since directed the city's Human Resources administrator and the investigation commissioner to conduct a separate probe, has defended the hiring of ex-convicts for such programs.

Rather than buying them off, the

mayor maintains, "these most unreachable of our youth were hired to see if young people with leadership ability could be weaned away from a life of crime into constructive neighborhood work."

A spokesman for Mackell reaffirmed yesterday that the main issue is "whether criminals were being paid while in jail or were not performing work."

Pertinent city records and documents regarding the hiring are expected to be turned over to a grand jury tomorrow to decide whether any wrongdoing is involved. This is a standard procedure, said the spokesman, adding that it doesn't

(Turn to Page 15)

Continued From Page 1)

mean necessarily that the DA has found cause for prosecution.

One of those on the list, which Procaccino says is based in a police department memorandum, is Fred Fernandez, director of the Malcolm X Afro-American Cultural Center at 131-16 Northern Blvd., Corona. Fernandez is among those indicted two years ago for anarchy and arson as a member of the militant black Revolutionary Action Movement (RAM).

The case is now before the U.S. Supreme Court, with the defendants challenging the constitutionality of the state's anarchy law, under which they were indicted.

"I think the investigation is a big farce," said Fernandez yesterday. "The whole thing is a political game which I'm sure will amount to nothing."

Fernandez said the publicity of the investigation hasn't affected the operation of his center at all. "People continue to come in and give us their support," said Fernandez. "Right now we're conducting a clothing drive for welfare recipients."

"The center is one of 14 'satellite' storefronts set up in 1967 to reach young dropouts and delinquents."

THE DIRECTOR of another youth center cited by Procaccino, the White Negro Cultural Movement Center in Corona, said it was business as usual at the center. "We have no problem with the investigation," he said.

Joseph Bostic Sr., the director, pointed out that he has been serving as a consultant for the Queens County Crime Prevention Board, an advisory group under the auspices of the district attorney's office.

Both Bostic and Fernandez said they and their staff have not been questioned by either the mayor's or the DA's office since the investigation began.

EXHIBIT 6

Grand Jury Probes Cons on City Payroll

By IVEN HSIAO

A top aide to Mayor Lindsay was to testify today before a Queens grand jury investigating charges by Democratic mayoral candidate Mario Procaccino that some "heralded criminals" had been hired for the city's youth programs and got paid while in jail.

Barry H. Gotteherer, chairman of the Mayor's Urban Action Task Force, who has volunteered to testify, is expected to be questioned about at least one instance involving a convict from East Elmhurst now serving a seven-year term for robbery.

The incident came to light yesterday when, at the start of the grand jury investigation, Queens Dist. Atty. Thomas J. Mackell told newsmen that his investigation uncovered at least one former city employe who got paid for one week in the summer of 1968 while in jail charged with grand larceny.

MACKELL IDENTIFIED the man as Lucien Baynes, 25, of 98-12 Astoria Blvd., East Elmhurst. The prosecution said Baynes was hired as a neighborhood youth counselor at the Malcolm X Afro-American Cultural Center in Corona in the summer of 1968 and that records show he got paid for one week in August while in jail.

Baynes was brought to court yesterday morning from an upstate prison to testify before the grand jury. However, the prisoner, though granted immunity from prosecution, refused to talk. Supreme Court Justice J. Irwin Shapiro ordered a hearing today to decide whether Baynes should be held for contempt.

Baynes was sentenced to seven years last September after he was convicted of robbing a Hollis supermarket earlier this year.

Yesterday, Mackell indicated that the grand jury in-

vestigation may not be concluded before Election Day a week from today. When Comptroller Procaccino handed Mackell a list containing 16 names a week ago and asked the DA to investigate, Mackell said he hoped the case would be wrapped up before Nov. 4.

ASKED WHETHER indictments could be expected, Mackell said: "Yes, there could be. The investigation is strictly to find out whether people got paid while in jail. I'm not trying to make a big deal of this."

Mackell, who has endorsed Procaccino for mayor, said he supports the hiring of young people with criminal records for the purpose of rehabilitation.

This position is somewhat at variance with that of the comptroller, who says he is against the hiring of criminals "to keep them quiet."

According to Asst. Dist. Atty. James Robertson, who's heading the investigation, Baynes was hired by the Youth Board Research Institute of New York City as a \$100-a-week neighborhood counselor at the Malcolm X center during the summer of 1968. Between Aug. 21 and 28, 1968, Robertson said, Baynes was held in bail on a charge of grand larceny (he later was allowed to plead guilty to petty larceny and was given credit for time served).

A PAY CHECK of \$175.26 covering the period was allegedly issued while Baynes was still under custody and was cashed by a co-worker, Frank Fernandez, brother of Fred Fernandez who is presently director of the Malcolm X center at 101-16 Northern Blvd., Corona.

When Baynes was later freed in bail and questioned Frank Fernandez about the check, according to Robertson, a fight ensued and Baynes was shot in the leg

by Fred Fernandez. Ironically, Fernandez, who's since been indicted on felonious assault, was scheduled to go on trial today in this case.

Both Baynes and Fred Fernandez are on the list submitted to Mackell by Procaccino, who had based the list on a police department memorandum. Fernandez is also among those indicted two years ago for anarchy and arson as a member of the militant black Revolutionary Action Movement (RAM). That case is now before the U. S. Supreme Court, with the defendants challenging the constitutionality of the state's anti-anarchy law.

Mackell said that at the request of the city, the Police Department had "reluctantly" recommended these names for employment on the basis of "quality and leadership with street crowds . . . and potential with the community."

"I don't know what they mean by 'potential' with the community," said Mackell sarcastically.

MACKELL SAID that five more names had since been added to the list, including those of Raymond Smith and Abraham Taylor, who were also indicted in the RAM case. Most of the people on the list, many of them reportedly having criminal records, were hired by the city to work at the Malcolm X center at one time or another.

The center is one of 14 "satellite" storefronts set up in 1967 to reach dropouts and delinquents. The program was financed jointly by the Urban Coalition, private businesses and the Youth Services Agency, a division of the city's Human Resources Administration. However, the agency has since June 30 cut off funds for the center and several others after they balked at an agency directive that civil service standards be introduced among the staffs.

Long Island Press February 19, 1971

RAM Suspect Held As Bank Bandit

Since July 1967, Fred Fernandez of East Elmhurst, has been waiting to go to trial on charges of anarchy and conspiracy to commit arson as a member of RAM (Revolutionary Action Movement).

During that period while he was free on bail, two of his co-defendants—Herman Ferguson, a former Jamaica junior high school principal, and Arthur Harris—were convicted of conspiracy to murder civil rights leaders Roy Wilkins and Whitney Young.

When Ferguson and Harris lost their appeals, they jumped bail and fled to Algeria, according to federal authorities.

Yesterday, Fernandez, 27, of 94-17 32nd Ave., was held in \$100,000 bail by Magistrate Max Shiffman in Brooklyn Federal Court on a bank robbery charge.

U.S. ATTY. EDWARD NEAHER said Fernandez participated in the armed robbery of the First Federal Savings and Loan Association, 44-04 Kissena Blvd., Flushing, on Dec. 24 in order to get money to flee this country and join other militants of the RAM group in Algeria.

Neaher described Fernandez as a member of the Black Panthers Party and a triggerman for the RAM group.

"This man is dangerous and violent," said Asst. U.S. Atty. Lawrence Soicher. "The FBI has a strong case against him in this bank robbery. They have sequence photos of him taken in the bank and identification by eyewitnesses."

Fernandez' attorney, Eleanor Peel, told the court her client had only one conviction on his record for an assault on a policeman. She said the charges pending against him in the RAM case are still pending disposition by the U.S. Supreme Court.

TWO OTHERS, who allegedly participated in the bank robbery, were apprehended on Feb. 2. They are Horsun Howard, 17, of 142-18 222nd St., Springfield Gardens, and Jerome Reide, 16, of 117-31 109th St., St. Albans.

Fernandez and his accomplices escaped with \$15,000 from the bank robbery, according to Soicher.

Fernandez will get a hearing March 3. If convicted, he could be imprisoned for 45 years.

At the time of his arrest yesterday, FBI agents said a 45-calibre automatic and 60 rounds of ammunition were confiscated at his home.

EXHIBIT I

Ex-Antipoverty Official Seized As Armed Bank Robber Here

By MORRIS KAPLAN

A former antipoverty official under indictment for anarchy and arson as a member of the Revolutionary Action Movement (RAM) was arrested yesterday on charges of bank robbery.

United States Attorney Edward R. Neaher of the Eastern District identified the suspect as Fred Fernandez, 27 years old, of 94-17 32d Avenue, Elmhurst, Queens. Agents of the Federal Bureau of Investigation apprehended him at his home, where they also reported seizing a .45-caliber revolver and 60 rounds of ammunition.

Law-enforcement authorities described the suspect as a "trigger man" for RAM, which the F.B.I. has described as openly committed to the overthrow of the Government by violence and assassination.

1969 Accusation Recalled

During the 1969 mayoral campaign, Mario A. Procaccino accused the Lindsay administration of having hired 10 "hardened criminals" as youth counselors in 1967, including Fernandez. His arrest record included a conviction for felonious assault.

He was a director of the city-financed Malcolm X Afro-American Culture Center in Corona, Queens, and a group leader for the Manpower Development Board, a Federal antipoverty project in Corona.

Federal Magistrate Max Schiffman held Fernandez in \$100,000 bail for a hearing on March 3 after an Assistant United States Attorney, Lawrence Soicher, reported that the suspect had planned to flee to Algiers.

Mr. Soicher contended that with his share of the proceeds of the Dec. 24 robbery of the First Federal Savings and

Loan Association in Flushing, Queens, Fernandez was seeking to join two other RAM members in Algiers—Herman B. Ferguson, a former assistant elementary school principal here, and Arthur Harris, a revolutionary.

The two had been convicted of conspiring in 1968 to murder Roy Wilkins, executive director of the National Association for the Advancement of Colored People, and Whitney Young Jr., executive director of the Urban League.

At his arraignment yesterday, Fernandez was charged with the armed robbery of the Flushing Savings Association and with endangering the lives of its personnel. If convicted, he would face up to 50 years in prison.

The defendant, wearing an Afro-styled hairdo, remained silent as Mr. Soicher said that he had confessed to stealing the gun used in the robbery. Two alleged accomplices have been arrested and another is being sought.

The father of four children, Fernandez is separated from his wife.

He was among the 16 Negroes, including Ferguson and Harris, who were arrested on June 21, 1967, on charges of plotting to terrorize the city by bombing subways, public utilities and department stores. Ferguson and Harris were subsequently accused of conspiracy to commit homicide.

Fernandez was among others charged with advocating criminal anarchy and conspiring to advocate criminal anarchy, but trial of that issue has been stayed pending a ruling by the Supreme Court on the constitutionality of the anarchy statute. Fernandez had been free in \$5,000 bail.

EXHIBIT J

MARCH 1, 1973

FERNANDEZ

4 Tried in Anarchy Take Lesser Plea

Four alleged members of the militant Revolutionary Action Movement, originally charged with anarchy, pleaded guilty yesterday in Queens Supreme Court before Justice Albert Bosch to possession of dangerous weapons.

Trails of six other defendants, who were expected to plead guilty yesterday, were adjourned because their attorneys were unable to be present because of other commitments.

Chief Assistant District Attor-

ney Frederick Ludwig said the four were allowed to plead to reduced charges because of a question of whether the state anarchy law, under which they were originally arrested, is constitutional.

Ludwig said that he expects that the four would not be imprisoned after the probation report is turned over to Bosch. He explained that they have not been in trouble with the law since their arrests in 1967.

2 Jumped Bail

Two of the original 15 alleged Rams arrested, Herman Ferguson and Arthur Harris, jumped \$10,000 bail each and are reported in Algeria.

Charges against Fred Fernandez and Ursula West were dismissed earlier this year. Fernandez was a former antipoverty official in Corona.

One defendant, Ray Smith, was put in the narcotic addiction program in January for five years.

EXHIBIT K

Text of a Statement by the President on Allegations Surrounding Watergate Inquiry

WASHINGTON, May 22.

Following is a statement by President Nixon today on the Watergate case as released by the White House:

Allegations surrounding the Watergate affair have so escalated that I feel a further statement from the President is required at this time.

A climate of sensationalism has developed in which even second- or third-hand hearsay charges are headlined as fact and repeated as fact.

Important national security operations which themselves had no connection with Watergate have become entangled in the case.

As a result, some national security information has already been made public through court orders, through the subpoenaing of documents and through testimony witnesses have given in judicial and Congressional proceedings. Other sensitive documents are now threatened with disclosure; continued silence about those operations would compromise rather than protect them, and would also serve to perpetuate a grossly distorted view—which recent partial disclosures have given—of the nature and purpose of those operations.

Threefold Purpose

The purpose of this statement is threefold:

—First, to set forth the facts about my own relationship to the Watergate matter.

—Second, to place in some perspective some of the more sensational—and inaccurate—of the charges that have filled the headlines in recent days, and also some of the matters that are currently being discussed in Senate testimony and elsewhere.

—Third, to draw the distinction between national security operations and the Watergate case. To put the other matters in perspective, it will be necessary to describe the national security operations first.

In citing these national security matters it is not my intention to place a national security "cover" on Watergate, but rather to separate them out from Watergate—and at the same time to explain the context in which certain actions took place that were later misconstrued or misused.

Long before the Watergate break-in, three important national security operations took place which have subsequently become entangled in the Watergate case.

Three Operations Involved

—The first operation, begun in 1969, was a program of wiretaps. All were legal, under the authorities then existing. They were undertaken to find and stop serious national security leaks.

—The second operation was a reassessment, which I ordered in 1970, of the adequacy of internal security measures. This resulted in a plan and a directive to strengthen our intelligence operations. They were protested by Mr. Hoover, and as a result of his protest they were not put into effect.

—The third operation was the establishment, in 1971, of a special investigations unit in the White House. Its primary mission was to plug leaks of vital security information. I also directed this group to prepare an accurate history of certain crucial national security matters which occurred under prior Administrations, on which the Government's records were incomplete.

Here is the background of these three security operations initiated by my Administration.

By mid-1969, my Administration had begun a number of highly sensitive foreign policy initiatives. They were aimed at ending the war in Vietnam, achieving a settlement in the Middle East, limiting nuclear arms, and establishing new relationships among the great powers. These involved highly secret diplomacy. They were closely interrelated. Leaks of secret information about any one could endanger all.

Exactly that happened. News accounts appeared in 1969, which were obviously based on leaks—some of them extensive and detailed—by people having access to the most highly classified security materials.

There was no way to carry forward these diplomatic initiatives unless further leaks could be prevented. This required finding the source of the leaks.

Wiretap Program Begun

In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February, 1971. Fewer than 20 taps, of varying duration, were involved. They produced important leads that made it possible to tighten the security of highly sensitive materials.

I authorized this entire program. Each individual tap was undertaken in accordance with procedures legal at the time and in accord with long-standing precedent.

The persons who were subject to these wiretaps were determined through coordination among the director of the F.B.I., my assistant for national security affairs, and the Attorney General. Those wiretapped were selected on the basis of access to the information leaked, material in security files, and evidence that developed as the inquiry proceeded.

Information thus obtained was made available to senior officials responsible for national security matters in order to curtail further leaks.

1970 Intelligence Plan

In the spring and summer of 1970, another security problem reached critical proportions. In March a wave of bombing and explosions struck college campuses and cities. There were 400 bomb threats in one 24-hour period in New York City. Rioting and violence on college campuses reached a new peak after the Cambodian operation and the tragedies at Kent State and Jackson State. The 1969-70 school year brought nearly 1,800 campus demonstrations, and nearly 250 cases of arson on campus. Many colleges closed. Gun battles between guerrilla-style groups and police were taking place. Some of the disruptive activities were receiving foreign support.

Complicating the task of maintaining security was the fact that, in 1969, certain types of undercover F.B.I. operations that had been conducted for many years had been suspended. This also had substantially impaired our ability to collect foreign intelligence information. At the same time, the relationships between the F.B.I. and other intelligence agencies had been deteriorating. By May, 1970, F.B.I. Director Hoover shut off his agency's liaison with the C.I.A. altogether.

Meets With Officials

On June 5, 1970, I met with the director of the F.B.I. (Mr. Hoover), the director of the Central Intelligence Agency (Mr. Richard Helms), the director of the Defense Intelligence (Gen. Donald Bennett) and the director of the National Security Agency (Adm. Noel Gayler). We discussed the urgent need for better intelligence operations. I appointed Director Hoover as chairman of an inter-agency committee to prepare recommendations.

On June 25, the committee submitted a report which included specific options for expanded intelligence operations, and on July 23 the agencies were notified by memorandum of the options approved. After reconsideration, however, prompted by the opposition of Director Hoover, the agencies were notified five days later, on July 28, that the approval had been rescinded. The options initially approved had included resumption of certain intelligence operations which had been suspended in 1966. These in turn had included authorization for surreptitious entry—break-ins and entering, in effect—specified categories of targets in specified situations relating to national security.

— Because the approval was

withdrawn before it had been implemented, the net result was that the plan for expanded intelligence activities never went into effect.

EXHIBIT L

Cites National Priorities

I wanted justice done with regard to Watergate, but in the scale of national priorities with which I had to deal—and not at that time having any idea of the extent of political abuse which Watergate reflected—I also had to be deeply concerned with insuring that neither the covert operations of the C.I.A. nor the operations of the special investigations unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to insure that the investigation of the break-in not expose either an unrelated covert operation of the C.I.A. or the activities of the White House investigations unit—and to see that this was personally coordinated between General Walters, the deputy director of the C.I.A., and Mr. Gray of the F.B.I. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way.

On July 6, 1972, I telephoned the acting director of the F.B.I., L. Patrick Gray, to congratulate him on his successful handling of the hijacking of a Pacific Southwest Airlines plane the previous day. During the conversation Mr. Gray discussed with me the progress of the Watergate investigation, and I asked him whether he had talked with General Walters. Mr. Gray said that he had, and that General Walters had assured him that the C.I.A. was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him

Summary Offered

In summary, then:

(1) I had no prior knowledge of the Watergate bugging operation, or of any illegal surveillance activities for political purposes.

(2) Long prior to the 1972 campaign, I did set in motion certain internal security measures, including legal wiretaps, which I felt were necessary from a national security standpoint and, in the climate then prevailing, also necessary from a domestic security standpoint.

(3) People who had been involved in the national security operations later, without my knowledge or approval, undertook illegal activities in the political campaign of 1972.

(4) Elements of the early post-Watergate reports led me to suspect, incorrectly, that the C.I.A. had been in some way involved. They also led me to surmise, correctly, that since persons originally recruited for covert national security activities had participated in Watergate, an unrestricted investigation of Watergate might lead to and expose those covert national security operations.

(5) I sought to prevent the exposure of these covert national security activities, while encouraging those conducting the investigation to pursue their inquiry into the Watergate itself. I so instructed my staff, the Attorney General and the acting director of the F.B.I.

(6) I also specifically instructed Mr. Haldeman and

that I failed to prevent them. I should have been more vigilant.

It was to help insure against any repetition of this in the future that last week I proposed the establishment of a top-level, bipartisan, independent commission to recommend a comprehensive reform of campaign laws and practices. Given the priority, I believe it deserves, such reform should be possible before the next Congressional elections in 1974.

It now appears that there were persons who may have gone beyond my directives, and sought to expand on my efforts to protect the national security operations in order to cover up any involvement they or certain others might have had in Watergate. The extent to which this is true, and who may have participated and to what degree, are questions that it would not be proper to address here. The proper forum for settling these matters is in the courts.

To the extent that I have been able to determine what probably happened in the tangled course of this affair, on the basis of my own recollections and of the conflicting accounts and evidence that I have seen, it would appear that one factor at work was that at critical points various people, each with his own perspective and his own responsibilities, saw the same situation with different eyes and heard the same words with different ears. What might have

Support for Cox Inquiry

With his selection of Archibald Cox—who served both President Kennedy and President Johnson as Solicitor General—as the special supervisory prosecutor for matters related to the case, Attorney General-designate Richardson has demonstrated his own determination to see the truth brought out. In this effort he has my full support.

Considering the number of persons involved in this case whose testimony might be subject to a claim of executive privilege, I recognize that a clear definition of that claim has become central to the effort to arrive at the truth.

Accordingly, executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up.

I want to emphasize that this statement is limited to my own recollections of what I said and did relating to security and to the Watergate. I have specifically avoided any attempt to explain what other parties may have said and done. My own information on those other matters is fragmentary, and to some extent contradictory. Additional information may be forthcoming of which I am unaware. It is also my understanding that the information which has been conveyed to me has also become available

assured him that the C.I.A. was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him

to press ahead with his investigation.

It now seems that later, through whatever complex of individual motives and possible misunderstandings, there were apparently wide-ranging efforts to limit the investigation or to conceal the possible involvement of members of the Administration and the campaign committee.

I was not aware of any such efforts at the time. Neither, until after I began my own investigation, was I aware of any fund raising for defendants convicted at the break-in at Democratic headquarters, much less authorize any such fund-raising. Nor did I authorize any offer of executive clemency for any of the defendants.

In the weeks and months that followed Watergate, I asked for, and received, repeated assurances that Mr. Dean's own investigation (which included reviewing files and sitting in on F.B.I. interviews with White House personnel) had cleared everyone then employed by the White House of involvement.

Watergate itself. I so instructed my staff, the Attorney General and the acting director of the F.B.I.

(6) I also specifically instructed Mr. Haldeman and Mr. Ehrlichman to insure that the F.B.I. would not carry its investigation into areas that might compromise these covert national security activities or those of the C.I.A.

(7) At no time did I authorize or know about any offer of executive clemency for the Watergate defendants. Neither did I know, until the time of my own investigation, of any efforts to provide them with funds.

Conclusion

With hindsight, it is apparent that I should have given more heed to the warning signals I received along the way about a Watergate cover-up and less to the reassurances.

With hindsight, several other things also become clear:

—With respect to campaign practices, and also with respect to campaign finances, it should now be obvious that no campaign in history has ever been subjected to the kind of intensive and searching inquiry that has been focused on the campaign waged in my behalf in 1972.

It is clear that unethical, as well as illegal, activities took place in the course of that campaign.

None of these took place with my specific approval or knowledge. To the extent that I may in any way have contributed to the climate in which they took place, I do not intend to go to the extent

of my own perspective and his own responsibilities, saw the same situation with different eyes and heard the same words with different ears. What might have seemed insignificant to one seemed significant to another; what one saw in terms of public responsibility, another saw in terms of political opportunity; and mixed through it all, I am sure, was a concern on the part of many that the Watergate scandal should not be allowed to get in the way of what the Administration sought to achieve.

The truth about Watergate should be brought out in an orderly way, recognizing that the safeguards of judicial procedure are designed to find the truth, not to hide the truth.

Additional information may be forthcoming of which I am unaware. It is also my understanding that the information which has been conveyed to me has also become available to those prosecuting these matters. Under such circumstances, it would be prejudicial and unfair of me to render my opinions on the activities of others; those judgments must be left to the judicial process, our best hope for achieving the just result that we all seek.

As more information is developed, I have no doubt that more questions will be raised. To the extent that I am able, I shall also seek to set forth the facts as known to me with respect to those questions.

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The plan, which would permit the United States to secretly intercept the Soviet satellite's communications, is based upon a series of secret foreign intelligence capabilities and procedures, which of course must remain secret. It was this unused plan and related documents that John Dean removed from the White House and placed in a safe deposit box, giving the keys to Judge Sirica. The same plan, still unused, is being headlined today.

Coordination among our intelligence agencies continued to fall short of our national security needs. In July, 1970, having earlier discontinued the F.B.I.'s liaison with the C.I.A., Director Hoover ended the F.B.I.'s normal liaison with all other agencies except the White House. To help remedy this, an Intelligence Evaluation Committee was created in December, 1970. Its members included representatives of the White House, C.I.A., F.B.I., N.S.A., the Departments of Justice, Treasury, and Defense, and the Secret Service.

The Intelligence Evaluation Committee and its staff were instructed to improve coordination among the intelligence community and to prepare evaluations and estimates of domestic intelligence. I understand that its activities are now under investigation. I did not authorize nor do I have any knowledge of any illegal activity by this committee. If it went beyond its charter and did engage in any illegal activities, it was totally without my

some 7,000 pages, which had been taken from the most sensitive files of the Department, of State and Defense and the CIA, covering military and diplomatic moves in a war that was still going on.

Moreover, a minority of the documents published with the first three installments in The Times had not been included in the 47-volume study—raising serious questions about what and how much else might have been taken.

There was every reason to believe this was a security leak of unprecedented proportions.

It created a situation in which the ability of the Government to carry on foreign relations even in the best of circumstances could have been severely compromised. Other governments no longer knew whether they could deal with the United States in confidence. Against the background of the delicate negotiations the United States was then involved in on a number of fronts—with regard to Vietnam, China, the Middle East, nuclear arms limitations, U.S.-Soviet relations, and others—in which the utmost degree of confidentiality was vital, it posed a threat so grave as to require extraordinary actions.

'Plumbers' Group Formed ?

Therefore during the week following the Pentagon papers publication, I approved the creation of a special in-

as a matter of first priority, the unit should find out all it could about Mr. Ellsberg's associates and his motives. Because of the extreme gravity of the situation, and not then knowing "what additional national secrets Mr. Ellsberg might disclose, I did impress upon Mr. Krogh the vital importance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal.

However, because of the emphasis I put on the crucial importance of protecting the national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention.

- Consequently, as President, I must and do assume responsibility for such actions despite the fact that I, at no time approved or had knowledge of them.

I also assigned the unit a number of other investigatory matters, dealing in part with compiling an accurate record of events related to the Vietnam war, on which the Government's records were inadequate (many previous records having been removed with the change of Administrations) and which bore directly on the negotiations then in progress. Additional assignments included

to be questioned by the trial Attorney, I directed Assistant Attorney General Peterson to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters. Subsequently, on April 25, 1973, Attorney General Kleindienst informed me that because the Government had clear evidence that Mr. Hunt was involved in the break-in of the office of the psychiatrist who had treated Mr. Ellsberg, he, the Attorney General, believed that despite the fact that no evidence had been obtained from Hunt's acts, a report should nevertheless be made to the court trying the Ellsberg case. I concurred, and directed that the information be transmitted to Judge Byrne immediately.

Watergate

The burglary and buzzing of the Democratic National Committee headquarters came as a complete surprise to me. I had no inkling that any such illegal activities had been planned by persons associated with my campaign; if I had known, I would not have permitted it. My immediate reaction was that those guilty should be brought to justice and, with the five burglars themselves already in custody, I assumed that they would be.

Within a few days, however, I was advised that there

The Investigator

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nize nor do I have any knowledge of any illegal activity by this committee. If it went beyond its charter and did engage in any illegal activities, it was totally without my knowledge or authority.

The Special Investigations Unit

On Sunday, June 13, 1971, The New York Times published the first installment of what came to be known as "the Pentagon papers." Not until a few hours before publication did any responsible Government official know that they had been stolen. Most officials did not know they existed. No senior official of the Government had read them or knew with certainty what they contained.

All the Government knew, at first, was that the papers comprised 47 volumes and

"Plumbers" Group Formed

Therefore during the week following the Pentagon papers publication, I approved the creation of a special investigations unit within the White House—which later came to be known as the "plumbers." This was a small group at the White House whose principal purpose was to stop security leaks and to investigate other sensitive security matters. I looked to John Erlichman for the supervision of this group.

Egil Krogh, Mr. Ehrlichman's assistant, was put in charge. David Young was added to this unit, as were E. Howard Hunt and G. Gordon Liddy.

The unit operated under extremely tight security rules. Its existence and functions were known only to a very few persons at the White House. These included messrs. Haldeman, Ehrlichman and Dean.

At about the time the unit was created, Daniel Ellsberg was identified as the person who had given the Pentagon papers to The New York Times. I told Mr. Krogh that

previous records having been removed with the change of Administrations) and which bore directly on the negotiations then in progress. Additional assignments included tracing down other national security leaks, including one that seriously compromised the United States negotiating position in the SALT talks.

Sensitive Activities

The work of the unit tapered off around the end of 1971. The nature of its work was such that it involved matters that, from a national security standpoint, were highly sensitive then and remain so today.

These intelligence activities had no connection with the break-in of the Democratic headquarters, or the aftermath.

I considered it my responsibility to see that the Watergate investigation did not impinge adversely upon the national security area. For example, on April 18th, 1973, when I learned that Mr. Hunt, a former member of the special investigations unit at the White House, was

justice and, with the five burglars themselves already in custody, I assumed that they would be.

Within a few days, however, I was advised that there was a possibility of C.I.A. involvement in some way.

It did seem to me possible that, because of the involvement of former C.I.A. personnel, and because of some of their apparent associations, the investigation could lead to the uncovering of covert C.I.A. operations totally unrelated to the Watergate break-in.

In addition, by this time, the name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted to the fact that he had previously been a member of the special investigations unit in the White House. Therefore, I was also concerned that the Watergate investigation might well lead to an inquiry into the activities of the special investigations unit itself.

In this area, I felt it was important to avoid disclosure of the details of the national security matters with which the group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive.

L

Newsweek

June 4, 1973

at best. It also brought the overseas-oriented CIA, DIA and NSA into a far more comprehensive domestic partnership with the FBI, in the process erasing many of the carefully drawn limits by which these agencies had previously been bound—at least on the record.

The background of the plan, sketched last week in the President's Watergate statement and amplified by several intelligence experts, was as fascinating as the document itself. At the time it was prepared, in June of 1970, FBI boss J. Edgar Hoover, then 75, seemed to many high government officials to be losing his grip. More important, the bureau seemed paralyzed in terms of its own intelligence work—and cut off from other agencies.

Secret lawbreaking had been part of the FBI repertoire since 1941. With the formal or tacit approval of each succeeding Administration—sometimes just a

effectiveness. But there is solid evidence that Hoover had not kept up with changing styles of radical activity, and that he had largely ended liaison between his men and other investigative agencies. "We read about the Columbia University riot in the papers," one veteran agent recalled. "Hell, we were getting half our information from the newspapers."

By the summer of 1970, the White House was seriously concerned over the wave of domestic unrest apparently fomented by radicals and ghetto militants. By one accounting there were 1,792 campus demonstrations in the 1969-70 school year alone—plus 274 cases of arson, fourteen bombings, eight deaths and 7,500 arrests. More than 200 cops were attacked in racial incidents between January and November of 1970—with 173 wounded and 23 killed. Specifically, there was concern about such

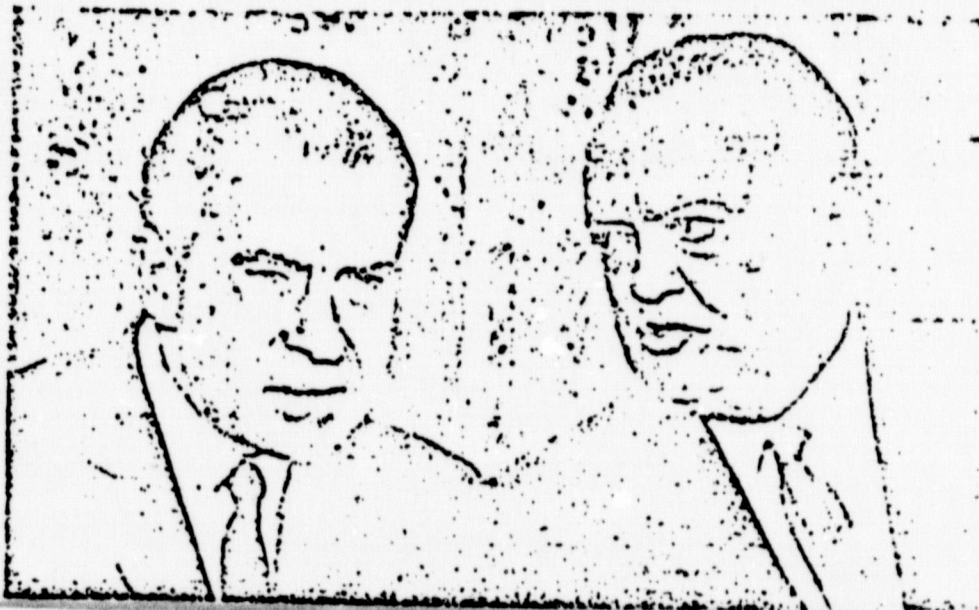
might have prompted the wide-spread repression of civil liberties.

The result, Newsweek learned, was that a plan for traditional counterintelligence aimed at foreign agents soon metamorphosed into a new scheme in which "heavy methods" would also be focused on Panthers, the Berrigan brothers, SDS and other leftist groups, draft dodgers and deserters. It proposed opening radicals' mail and harassing them with tax audits. "It is a totally far-right view," said one Congressional source. "It frequently brings up the question of legality and concludes that the problem is too great to consider legal niceties."

Fingerprinted: On July 23, 1970, the plan was approved by Mr. Nixon. But the approval was withdrawn five days later, after Hoover refused to go along. The FBI boss had scrawled objections on almost every page; he may also have



A question of intelligence: Huston (above), Hoover with the President



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wink or nod—Hoover mounted a broad array of illegal "special programs." Agents tapped telephones, bugged rooms and traced mail to and from subjects under investigation. "We had a virtually free hand," recalled one bureau veteran. "The boys would do what they had to ... And if they got caught, Hoover would disavow them." The free hand included the "surreptitious entry" (breaking and entering) mentioned last week by the President, infiltration of suspect groups and the blackmailing of foreign diplomats—studying their personalities, then luring them into compromising situations to get information.

Spy Rings: Following a 1963 White House order, Hoover "dropped the dirtiest of those tricks. The nation that once applauded their use against Nazi saboteurs and Communist spy rings was now less enthusiastic about counterespionage techniques turned against college kids and antiwar-matrons.

Some former FBI officials argue that none of this interfered with the FBI's

groups as Weatherman and the Panthers (were they receiving funds from countries in North Africa and the Caribbean?) and suspicion that Arab students in the U.S. might be plotting to sabotage Mideast peace talks at the U.N. "What the hell were we to do?" demanded former White House aide Tom Charles Huston last week. "Wait until people got killed? The President did not believe he had adequate information to deal with the magnitude of this problem."

Mr. Nixon's solution was a joint meeting with Hoover, CIA boss Richard Helms, Lt. Gen. Donald V. Bennett of the DIA and Vice Adm. Noel Gayler of NSA. Out of this session grew the idea for unifying and expanding critical intelligence activities. Perhaps the key figure, however, was young (then 29) Huston, who was assigned by the White House to help draft the plan and who seemed obsessed by the threat of domestic radicals. A former campus conservative leader, he still stresses his concern that continued unrest at the time

been loath to share the bureau's sole responsibility for domestic operations. In any event, Hoover protested to Attorney General John Mitchell, who backed Hoover's case. Some six months after the plan was officially pigeonholed, however, copies were distributed within an interdepartmental intelligence unit set up by Assistant Attorney General Robert Mardian—later a top Nixon campaign aide.

The plan was dead but its spirit apparently lingered on. Over the next two years, *Newsweek* learned, undercover agents for the Administration made surreptitious entries to undermine the defense in at least three cases against radicals: the Panthers, the Black Muslims and the Chicago Seven. White House counsel John Dean, who had worked with Mardian's group, obviously considered his copy of the plan worth filing. Also working with Mardian, as a Treasury representative, was ex-FBI man G. Gordon Liddy, who went on to the White House "plumbers," the Ellsberg case and the plot now known as Watergate.

EXHIBIT M

445W22K

June 4, 1973



Magruder: The man who turned

President's accounting, during the spring and summer of 1970—a time of proliferating campus riots, terrorist bombings and open warfare between "guerrilla-style groups" and the police. Intelligence gathering, Mr. Nixon said, was in trouble at the time because the FBI had abandoned "certain types of undercover operations"—including burglaries—and because the aging Hoover was in the

Krogh to have the unit "find out all I could about Mr. Ellsberg's associates and his motives"—and the burglary at the office of Ellsberg's psychiatrist followed.

Mr. Nixon insisted he never authorized the break-in and in fact had it reported to the judge in the Ellsberg trial after learning about it this spring, but he added that, given the stress he put on national security, he could understand how highly motivated individuals could have felt justified in engaging in specific activities I would have disapproved.

When the political scandals of 1972 broke, Mr. Nixon said, his single fear was not that the truth of Watergate might out but that the inquiry might blunder into covert national-security operations. His fears were quickened by the involvement of one of his plumbers, Hunt, in the Waterbugging, and by a report to the President—he didn't say from whom—"that there was a possibility of CIA involvement in some way." He accordingly told his two top hands, H.R. Haldeman and John Ehrlichman, to see that the investigation was restricted to Watergate and prevented from exposing either CIA or plumber operations. Four weeks ago, in his TV speech on the scandals, Mr. Nixon embraced Haldeman and Ehrlichman even as he bade them farewell; now, naming no names, he said some of his people "may have gone beyond my directives . . . in order to cover up any involvement they or certain others might have had in Watergate."

When the Shouting Stops

BLUEPRINT FOR A SUPER SECRET POLICE

In the low-key, bureaucratic language I used by the President last week, they were "specific options for expanded intelligence operations." What that really amounted to, however, was the most wide-ranging secret police operation ever authorized—however briefly—in the peacetime United States. It called for an unprecedented cooperative effort by the nation's most powerful intelligence agencies: the FBI, CIA, National Security Agency and Defense Intelligence Agency. And it paved the way for bugging, burglary, perhaps even blackmail by government agents against American citizens—among them Federal employees, antiwar activists, campus radicals and militant Black Panthers—as well as foreign students and diplomats.

The plan was operational for only five days in the summer of 1970, and the Administration says it was never implemented. But the potential was striking. "When you read it," predicted a Congressional source, "it will send chills up and down your spine." More chilling still, there was mounting evidence last week that the plan had helped spawn Watergate, the break-in at Daniel B. Ellsberg's

at the time because the FBI had abandoned "certain types of undercover operations"—including burglaries—and because the aging Hoover was in the process of breaking off relations with every other agency in the field.

Breaking and Entering

The President convened a crisis meeting of the major intelligence agencies in June; they returned a report calling, among other things, for "surreptitious entry-breaking and entering, in effect—on specified categories of targets" in the national-security field. The President approved the plans in July but called them off five days later on Hoover's protests, and they were never implemented (box). Still, said Mr. Nixon, some of the plans involved foreign intelligence matters, and the documents describing them—the John Dean papers—remain "extremely sensitive" to this day.

The vacuum in intelligence gathering continued, Mr. Nixon said, and he moved the White House into it, first trying to ramrod the established agencies with a special Intelligence Evaluation Committee—and later, in 1971, organizing the secret in-house gumshoe squad known formally as the Special Investigation Unit and informally as the "plumbers."

The unit, headed by Egil Krogh and staffed by Waterbudders-to-be G. Gordon Liddy and E. Howard Hunt, was first assigned to the leak of the Pentagon papers by Daniel Ellsberg to *The New York Times*. It looked at the time, Mr. Nixon said, like a "security leak of unprecedented proportion"; he directed

involvement they or certain others might have had in Watergate."

When the Shouting Stops

The first audience for the statement was the White House press corps, a body now almost at open war with the Administration's front men—and the newsmen received it with almost unprecedented ferocity. Garment and the President's newly appointed special counsel on Watergate, J. Fred Buzhardt, took turns not answering questions about the 1970 breaking-and-entering plans. "I have no authority to declassify the document," Buzhardt finally protested. "Classified or otherwise," one reporter shouted back, "do you realize you are leaving unanswered the question of whether or not the President of the United States

(Continued on Page 20)



up and down your spine." More than a week still, there was mounting evidence last week that the plan had helped spawn Watergate, the break-in at Daniel Ellsberg's psychiatrist's office—and a string of other burglaries by clandestine operatives of the Nixon Administration.

Risks: Under the original plan, the FBI was authorized to take on foreign intelligence assignments inside the U.S. (embassy break-ins, for example), while the CIA got a green light to run its own domestic operations—including, *New York Times* learned, spying on high U.S. officials who were suspected of being security risks. One of the proposals would have created a new cadre of "CIA agents" for domestic missions, operatives who could not be traced to the agency and whose identity and assignments would be concealed from all but the highest agency officials. "This was the purpose," said one source familiar with the document, "was to try to get information on matters the Administration felt endangered national security by whatever means were considered necessary. But a lot of what was proposed didn't deal with national security at all. In many ways it seems like just an excuse for domestic spying."

Similar activities had been carried out routinely by the FBI against foreign agents from World War II through the mid-60s. What made the new strategy so significant was the way it broadened the target to include domestic radicals and other citizens whose direct ties to foreign governments were questioned.

New York Times, June 12, 1973

Watergate Brings New Burglary Reports

By JOHN KIFNER

Reports of mysterious burglaries of radical groups, critics of the Administration and "movement" lawyers are beginning to come to light after Watergate-related revelations.

One such burglary, that of the psychiatrist treating Dr. Daniel Ellsberg, was committed at the behest of White House aides. Last Tuesday, The New York Times reported allegations that John D. Ehrlichman, the former Presidential adviser, had authorized a series of espionage missions, including two previously undisclosed illegal wiretaps, beginning in 1969 by an

ad hoc White House intelligence group.

The Senate committee investigating the bugging of Democratic national headquarters has begun to look into whether espionage activities against dissidents may have been undertaken by elements of the White House staff or the Justice Department.

One mysterious burglary occurred last summer in the office of a lawyer representing one of a group of Vietnam veterans indicted a few days later on Federal charges of conspiring to attack the Republican National Convention with auto-

matic weapons, crossbows and slingshots.

In his Senate testimony, one of the Watergate conspirators, James W. McCord Jr., cited the indictment of the Vietnam Veterans Against the War several times. He asserted that his fears of groups prone to "violence" had been a factor in his participation in the bugging of the Democrats.

The attorney, Carol Wild Scott of Gainesville, Fla., said in an affidavit sworn on July 10, 1972, that she had discovered her office burglarized the previous day.

In the affidavit, she said that "no typewriters or petty cash or any other article of value was disturbed," but that her desk and papers had been gone through and that "my files had been searched and the file on Scott Camil was missing completely."

Mr. Camil was the purported leader of the alleged plot, according to the Government's indictment.

Inquiry in Florida

In Miami, Dade County Attorney Richard E. Gerstein said he had been continuing an investigation into whether Felipe de Diego—who has confessed to the break-in at the office of Dr. Ellsberg's psychiatrist along with two other Watergate conspirators, Bernard L. Barker and Eugenio R. Martinez—took part in other operations.

Incident in New York

In an affidavit, Gerald Lefcourt, an attorney for the defendants, said that after a mysterious fire in the New York building housing his law office he had found the file relating to Mark Rudd, a Weatherman leader, strewn on the floor.

In Chicago, members of the People's Law Office, a legal collective that represented Black Panthers, Weathermen and other radicals, recalled a burglary in the summer of 1971 but were not certain whether legal papers had been disturbed.

to Mark Rudd, a Weatherman leader, strewn on the floor. In Chicago, members of the People's Law Office, a legal collective that represented Black Panthers, Weathermen and other radicals, recalled a burglary in the summer of 1971 but were not certain whether legal papers had been disturbed.

Indictment.

Inquiry in Florida

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De Diego has reportedly said that he would testify to his knowledge of other burglaries if he were granted immunity.

In a telephone interview, Mr. Gerstein recalled that the office of his chief investigator was broken into over last year's July 4 weekend, shortly after he had become involved in the Watergate affair by investigating secret campaign funds laundered in Mexico and deposited in a Miami bank.

Seattle Seven Case

Newsweek magazine reported last week that Senate investigators had been told that burglaries had been committed in connection with the Seattle Seven, Chicago Weathermen, Detroit 13 and Berrigan cases.

Michael Lerner, one of the defendants in the Seattle case, involving charges of a conspiracy to attack the Federal building there during a demonstration protesting the end of the Chicago conspiracy trial, said that his home had been burglarized twice during the trial.

In both cases, Mr. Lerner said in a telephone interview, legal papers relating to the trial were taken. He added that after the first burglary he had told an investigating policeman of his suspicion that the Federal Bureau of Investigation had committed the burglary.

"He said, 'There's no point in my even writing this down. My superiors will just get mad at me,'" Mr. Lerner said.

In Detroit last Tuesday, Federal District Judge Dannon J. Keith ordered the Government to disclose whether it had used sabotage, agents provocateurs or "other espionage activities," including burglarizing a lawyer's office, in the preparation of a case against Weathermen defendants.

EXHIBIT N

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F.#711,716

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ FEB 25 1971 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.

P.M.

----- X

UNITED STATES OF AMERICA,

- against -

FRED FERNANDEZ and HORSUN
HOWARD,

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 24th day of December 1970, within the Eastern District of New York, the defendant FRED FERNANDEZ and the defendant HORSUN HOWARD knowingly, wilfully and feloniously, by force, violence and intimidation, took approximately Fifteen Thousand Dollars (\$15,000.00) in currency, from the persons and presence of employees of the First Federal Savings and Loan Association, 44-04 Kissena Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said First Federal Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation. (Title 18 United States Code, Section 2113(a); Title 18 United States Code, Section 2.)

I N D I C T M E N T

71 CR 218

Cr. No.
(18 U.S.C., §2113(a)(d)
and §2)

COUNT TWO

On or about the 24th day of December 1970, within the Eastern District of New York, the defendant FRED FERNANDEZ and the defendant HORSUN HOWARD knowingly, wilfully and feloniously, by force, violence and intimidation, took approximately Fifteen Thousand Dollars (\$15,000.00) in currency, from the persons and presence of employees of the First Federal Savings and Loan Association, 44-04 Kissena Boulevard, Queens, New York, which money was in the care, custody, control, management and possession of the said First Federal Savings and Loan Association, the deposits of which institution were then and there insured by the Federal Savings and Loan Insurance Corporation, an act and offense in violation of Section 2113(a), Title 18, United States Code, and in the commission of this act and offense, the defendant FRED FERNANDEZ and the defendant HORSUN HOWARD assaulted and placed in jeopardy the lives of the employees of said institution, as well as the lives of other persons present, by the use of dangerous weapons. (Title 18 United States Code, Section 2113(d); Title 18 United States Code, Section 2.)

A TRUE BILL

John R. [Signature] FOREMAN

Edward R. Neaher by TPP
EDWARD R. NEAHER
United States Attorney
Eastern District of New York

ADDRESS REPLY TO
UNITED STATES ATTORNEY
AND REFER TO
INITIALS AND NUMBER

EJB:TRP:cd
F.#711:16

United States Department of Justice

A 15

UNITED STATES ATTORNEY

EASTERN DISTRICT OF NEW YORK
FEDERAL BUILDING
BROOKLYN, N. Y. 11201

November 30, 1973
FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
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NOV 30 1973 ★

TIME A.M.
P.M.

Honorable Jack B. Weinstein
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Fred Fernandez
Docket No. 71 CR 218

Dear Judge Weinstein:

With reference to our court appearance today, it is our position that we are unable to comply with the Court's order in so far as it relates to pages 45 and 46 of the FBI report, dated January 12, 1971. At the present time, FBI agents are attempting to ascertain the present status of the informants referred to in the above pages. Should we find that their situation has changed and that the danger has lessened, our position may change. In any event, a firm answer will be supplied to the Court and Counsel on Monday, December 3rd, 1973.

For the present, however, our position must be, and is, that we vigorously oppose the disclosure of this material for the reasons stated before in prior trials and in the Court of Appeals.

Very truly yours,

ROBERT A. MORSE
United States Attorney

By: *Thomas R. Pattison*
Thomas R. Pattison
Assistant U. S. Attorney

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.
★

NOV 30 1973 ★

TIME A.M.
P.M.

cc: Eleanor Jackson Piel, Esq.

*The Court's order is stayed until December 3, 1973. The clerk will inform the parties.
So ordered.
November 30, 1973.*

John B. Winter

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

JAN 11 1974

4 -----X
5 UNITED STATES OF AMERICA, :

TIME AM.
PM 71-CR-218

6 - against - :

7 FRED FERNANDEZ, :

8 Defendant. :

9 -----X

10 United States Courthouse
11 Brooklyn, New York

12 December 3, 1973
13 10:00 o'clock a.m.

14
15 B e f o r e :

16 HONORABLE JACK B. WEINSTEIN, U.S.D.J.
17
18

19 I HEREBY CERTIFY THAT THE WITHIN COPY IS A TRUE AND
20 ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN
21 AT SUCH PROCEEDING.

22 *Burton Sulzer*
23 OFFICIAL COURT REPORTER

24 BURTON SULZER
25 Official Court Reporter

1
2 APPEARANCES:

3 ROBERT A. MORSE, ESQ.,
4 United States Attorney for the
Eastern District of New York

5 BY: THOMAS PATTISON, ESQ.
6 Assistant United States Attorney

7
8 ELEANOR JACKSON PIEL, ESQ.
Attorney for Defendant.

9 * * * *

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2 MR. PIEL: Your Honor, I have a letter
3 here for you.

4 THE COURT: Your opponent has a copy of it?

5 MR. PATTISON: I have just now received it,
6 your Honor.

7 THE COURT: Let me first take care of Court
8 exhibit 2 marked 11/30/73. These are the files
9 from the Police Department. I have looked through
10 them and they have no bearing at all on this case.
11 The material is well known to the counsel for the
12 defendant.

13 This bears primarily upon prior cases which
14 are a matter of public record. The clerk is directed
15 to return these four files with the cards attached
16 to the Police Department.

17 Your name, sir?

18 MR. NEELEY: Patrick J. Neeley, Police Depart-
19 ment.

20 THE COURT: Here are the files with the cards.
21 Do you have any objection to that?

22 MRS. PIEL: I have no objection.

23 THE COURT: I am leaving in exhibit 2 a hand-
24 written sheet from me indicating the numbers on the
25 files that were turned over should we ever need them

1
2 again. Please do not destroy them. Thank you.

3 This Court exhibit 2 will be sealed in case
4 it is needed for appeal.

5 Let's address ourselves first to pages 45
6 and 46. You have made inquiry on those?

7 MR. PATTISON: Yes, I have, your Honor. That
8 risk which did in fact exist earlier does exist now.
9 We would ask the Court for leave to appeal the order
10 of the Court by way of writ now.

11 THE COURT: You don't need my leave, do you?

12 MR. PATTISON: Well, I think we just have to
13 inform the Court that it is not done in any sort of
14 lack of faith or just designed to put off the trial;
15 that is what we must and what we in fact do assure
16 the Court.

17 THE COURT: Well, I --

18 MR. PATTISON: That is not done for that
19 purpose.

20 THE COURT: I have perfect confidence in your
21 bona fides. However, I wish you would move promptly
22 and inform the Court of Appeals that the practice of
23 intervening in these difficult and long trials makes
24 it impossible to continue our calendars. They have
25 done it in a prior case which was set for November 7

1
2 and we have a very difficult calendar. I am not
3 carrying two trials today with a third one beginning
4 this afternoon, and I simply can't conduct a calendar
5 with the disruptions that occur when these things
6 happen. But I understand it.

7 MR. PATTISON: If the Court order stands,
8 there will not be any trial here. If the Court order
9 stands there will not be any trial here, your Honor.

10 THE COURT: Maybe they can do it very quickly.

11 MR. PATTISON: So we must appeal.

12 THE COURT: It is just two pages and it is
13 a simple problem. They can do it off the bench on
14 the stay. If they don't want the stay I will go
15 ahead. Otherwise, I am setting the trial for
16 Wednesday.

17 They can look at the papers -- where are they?

18 MR. PATTISON: Your Honor, I have them also,
19 I have copies of them.

20 THE COURT: Why don't you go over to the
21 Second Circuit and try to get a stay and you can
22 show them the two pages and let them decide what
23 they want to do.

24 MR. PATTISON: We should by today at 2
25 o'clock have either filed papers there or have gone

1
2 over there, and we will see --

3 THE COURT: I am putting the case on for
4 Wednesday. I am going to proceed with the trial.
5 If you get a stay then I won't go ahead with it.
6 That will mean they consider it important enough,
7 but I would think with just two pages background
8 the Court of Appeals has on this case they know
9 more about it than I do. They can make that de-
10 cision. So I am assuming that we are going to go
11 ahead on Wednesday, although I do say for the
12 record that I believe in your bona fides and that
13 you are doing this in order to protect the wit-
14 nesses.

15 MRS. PIEL: I am concerned about something
16 that you said at the hearing on Friday about the
17 character of the defendant, that he is a dangerous
18 man. I don't believe there is anything in the
19 record which would warrant any such conclusion.

20 THE COURT: I say on the record it is reason-
21 able to assume that the government has a good basis
22 for believing that he is a dangerous man. I don't
23 know whether he is dangerous or not. I have never
24 had anything to do with him.

25 All I can tell is that the record shows that

1
2 this defendant has been associated with violent
3 crimes and the government, in view of what it says,
4 has reason to make the statement. Whether in fact
5 he has been guilty of anything in the past or
6 whether he has been a choir boy in a church all
7 these years, I don't know, because I don't know any-
8 thing about him.

9 The record establishes that there is a basis
10 for the government's contention, and it is there-
11 fore, as far as I am concerned, a bona fide con-
12 tention.

13 MRS. PIEL: May I make it clear to your
14 Honor that at this moment the case in the Appellate
15 Division, the indictment having been dismissed and
16 the case being over with, the defendant sits before
17 you with one conviction of assault in the third
18 degree back in 1962. That's all. That's his en-
19 tire criminal record.

20 Now, if your Honor believes in the presumption
21 of innocence, the fact that he was arrested a number
22 of times cannot mean that he is in any way the kind
23 of person that you spoke of.

24 THE COURT: All right. Is there anything
25 else that we have to do this morning in view of this

1
2 letter?

3 MRS. PIEL: I am asking for a hearing and I
4 am asking to proceed with it.

5 THE COURT: What kind of hearing?

6 MRS. PIEL: It is very clear to me, your
7 Honor, I'm sorry that my prose is not effective to
8 make the point I wish to make, that the material
9 which you turned over to me on Friday, which the
10 government has had for lo these many months, is not
11 only 3500 material but Brady material, in my opinion.
12 And I wish to show your Honor that it is, and I
13 wish to call witnesses, I wish to call Mr. Peter
14 Schlamm; I wish to demonstrate that he had informa-
15 tion which should have been turned over to me in
16 May of 1971.

17 THE COURT: Assume that is all true, but
18 what has that to do with this case? I am trying
19 it de novo.

20 MRS. PIEL: I do not believe it is fair in
21 a case for the government to have four tries at
22 convicting a person.

23 THE COURT: I agree with you. If it were up
24 to me I would dismiss the case because I do not be-
25 lieve that when the government, and that includes

1
2 both the prosecutor and the Court, can't convict
3 or acquit a man after three trials he ought to go
4 free. But that is not the view of the Court of
5 Appeals and I'm going to follow the Court of Appeals.

6 MRS. PIEL: I have a new point here, your
7 Honor. It's not just that he has been tried three
8 times. The new point is that the government has
9 followed a policy of consistently, shall we say --
10 it amounts to effective deceit.. I do not --

11 THE COURT: We have a new counsel in this
12 case for the government who the Court has the utmost
13 confidence in so far as integrity is concerned. The
14 prior attorneys I will not comment on and I will not
15 comment on the way they conducted the trial because
16 it is not necessary for me to do so.

17 The man who sits before me is a man of
18 integrity and I do not believe that he is with-
19 holding anything.

20 MRS. PIEL: I have not made any comment about
21 Mr. Pattison. I am talking about a course of con-
22 duct, your Honor.

23 THE COURT: It no longer exists. I have told
24 you at the outset that I will do everything possible
25 to insure that this defendant gets a scrupulously

1
2 fair trial and I will do anything I can to assist
3 you in doing that.

4 MRS. PIEL: I wish to make my record then
5 as to what they have done. I don't believe I have
6 yet, and I wish to have a hearing and I wish to call
7 Mr. Schlamm and I wish to make my record as to what
8 has happened in this case up until now.

9 THE COURT: I don't believe it is relevant.

10 MRS. PIEL: It is certainly relevant that
11 Brady material was denied.

12 THE COURT: You have it now.

13 MRS. PIEL: No. The man is dead. That is
14 what I set forth here.

15 THE COURT: Sweeney?

16 MRS. PIEL: No. May I make my presentation
17 to you, at least?

18 THE COURT: Please.

19 MRS. PIEL: Among the papers which your Honor
20 turned over to me on Friday was a statement dated
21 1/26/71 taken by Mr. Sweeney from Mr. Schier. That
22 statement is of a man, and the only way I can describe
23 it to you is to show you the surveillance film, which
24 I propose to do as part of this hearing and as part
25 of the Wade hearing. This man of all the people in

1
2 the bank came the closest to the person who was
3 supposed to be Fred Fernandez, and you can see in
4 the surveillance film the person who was the robber
5 going over -- the only real motion that this man
6 takes in the surveillance film is he stands in one
7 place in the bank throughout the entire film.

8 At one point he moves forward toward this
9 man who I understand is Mr. Schier and takes some
10 money from him and then he steps back. Now, Mr.
11 Schier was interviewed after the bank robbery and
12 he said that that person who came toward him was
13 5 foot 6 inches tall.

14 THE COURT: Yes, I understand that.

15 MRS. PIEL: He also said he was also shown
16 pictures of Fernandez a month after -- two days
17 more than a month after the bank robbery and he
18 could not recognize him.

19 Now, I feel that that information is excul-
20 patory and is very strong. I called his widow last
21 night --

22 THE COURT: I agree with you.

23 MRS. PIEL: -- to find out when he died, and
24 he died in September of '71. So he was available
25 for me to have called during the first two trials

1
2 and this information was not given to me and in
3 fact the record will demonstrate, and I wish to
4 demonstrate within a hearing, I couldn't even get
5 their names and addresses between the first and
6 second trial. A list was not made available to me.
7 It was taken away from me and I never saw it again
8 so that I didn't even have his name and address.

9 THE COURT: The information I have is that
10 you had a list.

11 MR. PATTISON: Yes.

12 MRS. PIEL: Your Honor, for a very brief
13 moment I had a list. I had a list that was given
14 to me at the end of the trial and it was given to
15 me on one day. The case, as I recall, went to the
16 jury the next day. All of the exhibits -- and I
17 have put this in affidavits, I have said this so
18 many times, not to you -- all of the exhibits were
19 then taken by the clerk and given to Mr. Puccio. I
20 then came between the two trials on a number of
21 different occasions and asked Mr. Puccio for the
22 exhibits. He said he had given them to Mr. Sweeney
23 and I should call at the FBI for some exhibits.
24 I finally called at the FBI for them and
25 there were two exhibits that were not in that envelope
and I never had that list again.

1
2 THE COURT: It is clear that that was
3 wrong. You should have access to the exhibits.
4 They are public records and you will have access
5 to the exhibits now as you have had during the
6 course of the period while I have had this case.

7 MRS. PIEL: I am saying that this is ir-
8 revocable.

9 THE COURT: It may be you are right, and
10 certainly --

11 MRS. PIEL: That's why I want a hearing on
12 it.

13 THE COURT: I am not going to give it to
14 you. I am not sure and I won't be sure until after
15 I have heard the whole case what the effect of this
16 is. I will give you an instruction in the most
17 forceful terms that the government violated its
18 obligations to you and the defendant in not turning
19 this material over, and if you have been hurt by
20 having the witness die in the interim, then I will
21 allow you to introduce, even though it is hearsay,
22 the statements made by this witness to Mr. Sweeney,
23 allegedly. But I can't do anything else.

24 The matter has been sent back for a trial
25 and I am not convinced as of this moment that this

1 is sufficient to prejudice you in a way that
2 would prevent the fair trial.

3 MRS. PIEL: Will you mark my letter as part
4 of the record.

5 THE COURT: Of course. It will be filed
6 and docketed and marked as a Court exhibit. The
7 brief for appellant and appendix, two volumes. Do
8 you want that marked, too?

9 MRS. PIEL: I don't really think it's
10 necessary to mark the briefs since they are not new
11 material and they will burden the record, unless
12 your Honor will look at them.

13 THE COURT: No, I don't care to see your
14 argument.

15 THE CLERK: Marked as Court exhibits.

16 MR. PATTISON: I would hope that the Court
17 will not draft up any charge as of yet, up until
18 it hears both sides of what has been said.

19 THE COURT: Obviously I am going to do that.
20 I am not going --

21 MR. PATTISON: The Court had indicated that
22 it would give a charge which I think is in fact
23 predicated upon the Court's having heard only one
24 side of the issue.
25

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2 THE COURT: If you have something on the
3 other side I will hear it, but --

4 MR. PATTISON: Your Honor, Mrs. Piel had
5 Mac Schier's name at a time during and prior to the
6 first trial.

7 THE COURT: I understand that position, and
8 I have stated that I understood that was the position.
9 There is a question about it, however.

10 MRS. PIEL: There is one point which is
11 somewhat technical which I mention in my letter and
12 that has to do with one of the papers your Honor
13 turned over to me being supplemental to another
14 fingerprint report which I didn't see, latent finger-
15 print section. The report is numbered pages 30 and
16 31 on money seized in Fernandez --

17 MR. PATTISON: What page?

18 MRS. PIEL: Page 2 at the bottom of the page
19 and that report refers to another latent fingerprint
20 section from March 2, 1971. May I ask your Honor
21 to ask the government to produce that.

22 THE COURT: Yes. Produce that.

23 MR. PATTISON: The report refers to -- I
24 believe that this was turned over.

25 MRS. PIEL: That I don't know, I don't know

1
2 what it is and therefore --

3 MR. PATTISON: Your Honor, Mrs. Piel has
4 told me, and I believe has in fact told the Court,
5 that she has lost other evidence before, misplaced
6 exhibits, things of that sort.

7 MRS. PIEL: Everything you have given me
8 have been copies of things you have.

9 MR. PATTISON: I agree. So when you say that
10 you did not get this --

11 MRS. PIEL: I don't believe I got that other
12 report.

13 MR. PATTISON: This supplements latent finger-
14 print report which I believe was to the bank, I
15 believe.

16 MRS. PIEL: If I have seen it after you have
17 produced it I will withdraw my charge that I have
18 not seen it, but I don't know whether I have seen
19 it.

20 THE COURT: Is there anything further this
21 morning? The case is on for trial on Wednesday.

22 Any further application?

23 MRS. PIEL: I feel I am quite prejudiced not
24 being able to show you how the government has really
25 misstated the record. I didn't know this until

1
2 Friday.

3 THE COURT: You can produce it for the jury
4 on the issue of expoliation. I will allow you to
5 give it to the jury, which is more useful than
6 giving it to me. I can't tell on the basis of what
7 I have heard that is going to prejudice you. There
8 seems to be serious question about where all these
9 people were. I'm not sure.

10 MRS. PIEL: We are going forward first
11 with our Wade hearing, is that correct, your Honor?

12 THE COURT: That's my understanding. Is
13 that correct?

14 MR. PATTISON: Yes, it is, as far as I know.

15 MRS. PIEL: There is here a policeman, a
16 man by the name of Arena, and he requires an order
17 of the Court to return and I do want him when I
18 need him. I am happy to call him but he -- the
19 last time he did not seem to want to have that kind
20 of arrangement. So would your Honor order him back
21 on Wednesday at 2 o'clock.

22 THE COURT: Where is he? Would you mind
23 giving your name and identification to the reporter,
24 please.

25 MR. ARENA: Yes sir. Police Officer Vincent

1
2 Arena, 21005, 109th Precinct, New York City Police
3 Department.

4 THE COURT: Do you want a written order to
5 report on Wednesday or is an oral order sufficient?

6 MR. ARENA: I will need something in writing,
7 sir, if it's possible.

8 THE COURT: Submit an order and I will sign
9 it.

10 MRS. PIEL: I won't really need him on Wednesday.
11 I don't know when I really would need him, your
12 Honor.

13 THE COURT: Submit an order. Thank you very
14 much. We won't need you before Wednesday, and counsel
15 will get in touch with you and tell you when we need
16 you.

17 Anything further?

18 MRS. PIEL: I have one other witness here,
19 Miss Wendy Villalopis (phonetic). I don't need her
20 today and I don't know when I will need her. Will
21 your Honor put her on call?

22 THE COURT: What is your name?

23 MISS VILLALOPIS: Wendy Villalopis.

24 THE COURT: When do you want this witness to
25 come back?

1
2 MRS. PIEL: I would like this witness to be
3 ordered to come on reasonable notice if we need her.

4 THE COURT: You have a telephone?

5 MISS VILLALOPIS: Yes.

6 THE COURT: Would you arrange with counsel
7 to be available when she calls you, please. You can
8 arrange that.

9 MRS. PIEL: Thank you, your Honor. I'm not
10 sure whether or not there are any other people who
11 have responded to my subpoenas.

12 THE COURT: Is there anybody else in the
13 Fernandez case here on subpoena?

14 (No response.)

15 THE COURT: We start Wednesday at 10 o'clock.

16 MRS. PIEL: No, 2 o'clock.

17 THE COURT: At 2 o'clock.

18 MR. PATTISON: Pending the outcome at the
19 Court of Appeals, of course.

20 THE COURT: Mrs. Piel, maybe you can bring up
21 the other matters before the Court.

22 MRS. PIEL: It seems to me that would be
23 appropriate.

24 MR. PATTISON: If that is going to be, what
25 my work will be for the next week or so, I will ask

1
2 for more time to prepare the case as to the
3 actual merits, which I have not had the chance to
4 in fact do. This is what I asked for last week.

5 THE COURT: I can't give you any more time
6 on this case. Let's get finished with it one way
7 or another.

8 MR. PATTISON: This is what I want to do.
9 But it seems that there isn't any way to do it.

10 THE COURT: It has been tried three times.

11 MR. PATTISON: I agree, your Honor.

12 MRS. PIEL: What has happened has so poisoned
13 the whole case it should not be tried again, quite
14 apart from trying the issue on multiple trials.

15 THE COURT: I will consider that when I see
16 the evidence. On the basis of what I know now I
17 am not convinced that is the case.

18 MRS. PIEL: There is another witness here,
19 your Honor. Would your Honor order her back on
20 Wednesday.

21 THE COURT: What is she here for now, just
22 to bring documents?

23 MRS. PIEL: To bring records, yes.

24 THE COURT: Why can't she leave the documents?

25 VOICE: This is a personnel folder.

1
2 THE COURT: So?

3 VOICE: We don't usually leave it anyplace.

4 THE COURT: Do you want to keep coming back
5 and forth this way?

6 VOICE: What do they need me for?

7 MRS. PIEL: I have to look at it, your Honor.

8 THE COURT: Look at it here and if you don't
9 want to come back you can give it to the clerk and
10 he will hold it and call you when they are finished
11 with it. Thank you.

12 What is the situation of Mr. Fernandez now?

13 MR. PATTISON: He is on a writ.

14 MRS. PIEL: I am going to take steps now
15 immediately to get the proper papers to get his re-
16 lease and I think perhaps it's best that he stay in
17 federal custody, but the writ will not operate to
18 prevent his release because he is now bailed on
19 the federal offense. The writ brings him here be-
20 cause he is in state custody. That state release
21 should be, should we say, obliterated today and
22 cancelled, and I will take steps to do that, though
23 it is sometimes quite difficult.

24 THE COURT: I imagine the state may want to
25 take an appeal on that case and stay his release.

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2 MRS. PIEL: I doubt it.

3 THE COURT: Take him into federal custody.

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AFTERNOON SESSION

5:15 p.m.

THE COURT: I have a letter from Mr. Pattison, with a copy addressed to you. Have you received it?

MRS. PIEL: I have not received my copy, but I have seen the letter.

THE COURT: Would the Clerk mark it as an exhibit, please.

MRS. PIEL: Your Honor, I am most concerned with -- I suppose to some people it wouldn't make much difference actually, being in jail since February 18th, another day or another few hours, but I feel it does make a difference and I have been spending ever since I left your Courtroom trying to make arrangements to get Mr. Fernandez out of jail, and so far I have failed.

The situation seems to be as follows: I have a copy of the opinion of the Appellate Division, I have a copy, certified copy of the order. The order has been filed with the warden at the Queens House of Detention along with another paper showing that there are no holds of any kind -- that they had a hold, that they thought it was a hold and this was a paper saying there was no hold on him.

I have consulted with the Queens District

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2 Attorney, the chief of the Appeals Bureau, and
3 he has advised me he is not taking an appeal and
4 will cooperate in trying to get him out. However,
5 since he is in federal custody on this writ, the
6 Queens House of Detention will not release until
7 he has returned in person to Queens.

8 Accordingly, I would request you to do one
9 of two things: Make an order returning him to
10 Queens forthwith today, tonight, or, in the alter-
11 native, release him yourself on a petition which
12 I will prepare or writ of habeas corpus on the
13 grounds that the state -- that at this point there
14 is no longer any reason for him to be held in
15 detention.

16 THE COURT: You say they are not going to
17 prosecute an appeal from this?

18 MRS. PIEL: No.

19 THE COURT: Is that correct? Have you checked
20 that?

21 MR. PATTISON: No, I have not, your Honor.

22 MRS. PIEL: A man by the name of Neil O'Brien
23 is the head of the Appeals Bureau.

24 THE COURT: Call Mr. Neil O'Brien. What is
25 the number?

1
2 MRS. PIEL: A Mr. Bracken handled the appeal.
3 His name appears on the opinion.

4 THE COURT: What is the number there, do you
5 know?

6 MRS. PIEL: I don't.

7 THE COURT: (Addressing his law clerk.) Call
8 the Queens County District Attorney's office and
9 ask them whether they intend to prosecute an appeal
10 and whether they have any interest in keeping Mr.
11 Fernandez in jail.

12 There is no reason for the state to keep him,
13 in that event we will grant your habeas corpus.

14 MR. PATTISON: Your Honor, the reason why I
15 asked that we meet here today now at this time was
16 because since we last met --

17 THE COURT: Let's direct ourselves to this
18 problem of release.

19 MR. PATTISON: Very well, your Honor.

20 THE COURT: Is there any objection to our
21 releasing him from federal custody? Has he posted
22 his bail?

23 MRS. PIEL: Yes.

24 MR. PATTISON: Yes, he has.

25 As far as the writ goes, there are no grounds

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2 that I know of under which we could oppose that.
3 However, we feel that the bail is in fact much
4 too low and we would ask that the bail be raised
5 at this time.

6 THE COURT: To what?

7 MR. PATTISON: To \$25,000.

8 THE COURT: What was the state bail?

9 MRS. PIEL: He had two charges, the anarchy
10 bail was \$5,000. That was, of course, when the
11 case -- when that anarchy case was dismissed in
12 February, that went out. And the bail on the
13 assault was \$2,000. But it was through a bail-
14 bondsman, the parents put up the same house which
15 is put up now as security --

16 THE COURT: What do the parents own?

17 MRS. PIEL: They own a house in Queens, or
18 equity. I wasn't here when they put up the bond.

19 MR. PATTISON: They did sign over the deed
20 plus the sum of \$5,000 securing \$10,000 personal
21 bond, which is the payment of the \$500 plus the
22 house.

23 THE COURT: The \$500 bond or cash?

24 MR. PATTISON: Cash plus the house.

25 THE COURT: Do you know what the equity is?

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2 MRS. PIEL: I don't know. I didn't ask
3 them. But your Honor said that that was sufficient
4 at the time it was set.

5 THE COURT: It was sufficient. It was a
6 pro forma bail in view of the existing state
7 situation. What can they put up in cash?

8 MRS. PIEL: I think they have done it. I
9 think that's it.

10 THE COURT: What is the occupation of the
11 defendant's father?

12 MRS. PIEL: You know, I don't know.

13 THE COURT: There is somebody in Court.
14 Does he know?

15 MRS. PIEL: That is someone who knows.

16 Mrs. Fernandez works for a bank. She works
17 for the First National City Bank, the one that is
18 across the street from the Appellate Division on
19 Madison Avenue and 23rd Street.

20 THE COURT: What does the father do, do you
21 know?

22 MRS. PIEL: I don't know what the father
23 does. I will call or try to find out.

24 I can say this, your Honor, that I have been
25 associated as lawyer for Mr. Fernandez since 1967.

1
2 He has always appeared in Court and he has cer-
3 tainly had a lot of Court appearances during that
4 time. I believe him to be reliable. His parents
5 have roots in the community. They own their home.
6 They have lived in this house for many years and
7 he has lived there with them.

8 I know that the government has a different
9 view of him, but I believe him to be a very
10 reliable person. I wouldn't have fought so hard
11 for him if I didn't believe so, but that perhaps
12 is not relevant. But I do believe him to be re-
13 liable and I do believe that he will abide in
14 every way with the Court order, and we are just
15 about to go to trial anyway; he's going to be in
16 the Court all the time.

17 MR. PATTISON: Your Honor, that is what I
18 would like to in fact say to you.

19 THE COURT: Let's take care of this first.

20 MR. PATTISON: I believe that we cannot
21 separate the two.

22 THE COURT: All right.

23 MR. PATTISON: It might be moot with re-
24 gard to it in light of the position which we must
25 take now, and that is that we cannot go along with

1
2 the order of the Court concerning pages 45 and
3 also page 46.

4 THE COURT: May I see the pages, please,
5 Mr. Clerk.

6 Why not?

7 MR. PATTISON: Because of that risk which
8 we expressed, and which Judge Bruchhausen, Judge
9 Costantino, Judge Travia and the Court of Appeals
10 expressed, it still does exist.

11 THE COURT: The Court of Appeals has never
12 seen these papers.

13 MR. PATTISON: No. The issue, the state-
14 ment was made as to the risk and the Court of
15 Appeals knew the upshot of what is set forth there;
16 that is, the Court of Appeals knew that these two
17 parties picked out Tier, and based on that fact,
18 which the Court of Appeals knew, they felt that
19 in light of the risk posed, the statement by our
20 office as to the ultimate risk posed, in light of
21 the mileage which would be gained by that relative
22 to what Mrs. Piel was able to in fact show, even
23 without knowing their names, that the rule of law
24 in Roviero, that test had been met by us; that is
25 that the risk did in fact outweigh greatly whatever

1
2 mileage could be gained by merely having the names.

3 MRS. PIEL: For the first time, your Honor,
4 I have learned that there were two of them. Up
5 until now I thought it was --

6 MR. PATTISON: Unrelated individuals. The
7 Court of Appeals was wiped clear as to that.

8 MRS. PIEL: I must assert the importance
9 of this to the defendant's case, particularly in
10 view of the fact that I anticipate the government
11 bringing a witness, Mr. Webb, whom they brought
12 to the last trial, who will testify that by
13 looking at the photographs of the defendant and
14 the photographs of the surveillance picture that
15 this is the defendant. Now, here are two indi-
16 viduals who looked at this picture and said that
17 the picture was a picture of Mr. Tier. What could
18 be more important in terms of --

19 THE COURT: I think it is very important.
20 I would think that the defendant would want to call
21 these people, and if they are people of credibility
22 that it would be very persuasive with the jury to
23 see a contemporaneous failure to identify. If I
24 were defense counsel I couldn't try the case with-
25 out having this material.

1
2 I understand you are telling me that six
3 other judges disagree with me. But I have the
4 primary responsibility --

5 MR. PATTISON: I didn't say it that way,
6 your Honor.

7 THE COURT: That's perfectly all right.
8 That is in effect what you have said. There have
9 been instances where more than six have disagreed
10 with me, where I have not changed my opinion as a
11 result. But everybody has to do what he thinks is
12 right, as I take it you are doing what you think
13 is right.

14 MRS. PIEL: The six people are an over-
15 statement because the only judge who really looked
16 at that was Travia and I don't -- I had no idea
17 that these names were in this file when Travia
18 looked at it so I did not address my remarks to it.
19 After that the file was sealed and it was never
20 before the Court of Appeals.

21 THE COURT: I must say I just can't imagine
22 these people involved here being in any difficulty
23 at all. It just is absolutely incredible to me
24 that there is any substantial danger to people of
25 this kind.

1
2 MR. PATTISON: Your Honor, I would --

3 THE COURT: Under this kind of identifica-
4 tion. Not from this defendant. How can these
5 people --

6 MR. PATTISON: The Court will notice, your
7 Honor --

8 THE COURT: How can these people be in
9 trouble from this defendant?

10 MR. PATTISON: Howard and Reid.

11 THE COURT: Where are they now?

12 MR. PATTISON: In jail.

13 THE COURT: How long will they be in jail?

14 MR. PATTISON: They have other friends out
15 of jail.

16 THE COURT: There was so much other evidence
17 on Howard and Reid, they didn't depend on these
18 people, these people didn't testify.

19 MR. PATTISON: This was the first lead, your
20 Honor, from whence sprang everything else.

21 THE COURT: I really think this is far fetched
22 on the part of the government.

23 Let me say I just received word from my
24 clerk -- you spoke to who, Mr. O'Brien?

25 LAW CLERK: Yes.

1
2 THE COURT: Mr. O'Brien says that no appeal
3 will be taken. So I take it then that there is
4 no reason for the state to hold this person at all,
5 except the technical problems which can be handled
6 tomorrow by the defendant appearing in person from
7 the outside rather than from the inside.

8 Let's address ourselves to the bail problem
9 in view of the bail that has been fixed, the fact
10 that the defendant, so far as the record, has been
11 acquitted of these serious crimes that he has been
12 accused of committing, the status of the parents
13 in the neighborhood and the otherwise stable back-
14 ground of the defendant so far as his appearance
15 is concerned, and the lack of likelihood that he
16 would not appear as required in view of the strong
17 defense that apparently he does have -- the appli-
18 cation of the government for an increase in bail
19 is denied. The writ of habeas corpus made on oral
20 application -- I believe a writ can be applied for
21 orally, that is what the Court is for -- is granted
22 and the defendant will be released.

23 I expect counsel, however, to have the de-
24 fendant in Queens County Jail tomorrow to process
25 the necessary papers.

1
2 MRS. PIEL: I'm sure he will be there.

3 THE COURT: And I am releasing him in your
4 custody until tomorrow morning, if that is satis-
5 factory.

6 MRS. PIEL: Thank you, yes.

7 THE COURT: All right.

8 MRS. PIEL: May I have some kind of an order.
9 I will need something in writing.

10 THE COURT: Bring him up here and I will
11 order the marshal to release him. Have the marshal
12 bring him up. Is he in the building?

13 MRS. PIEL: He is in West Street.

14 MR. PATTISON: I think they are ready willing
15 and able to in fact bring him now out there, to
16 bring him out there to Queens and he will be let
17 out there and that could be it.

18 THE COURT: Will the U. S. Marshal do that?

19 MR. PATTISON: Yes, just by the Court signing
20 the order today.

21 THE COURT: Call the marshal and get the
22 writ.

23 MRS. PIEL: I would prefer his being released
24 here. I have run into so much red tape today. I
25 just have a feeling --

1
2 THE COURT: The marshal will drive him out.
3 If you have any problem, call me at home and I will
4 issue the writ from home. I don't like to inter-
5 fere with state process unnecessarily.

6 Call the marshal and have him come up here.
7 I will instruct him on the writ. Get any one of
8 the marshals and get this defendant. The only per-
9 son that there is a danger from, it seems to me,
10 is this defendant Fernandez, and Fernandez has
11 every reason in the world to make sure that these
12 two witnesses are preserved. As a matter of fact,
13 to give them a bodyguard.

14 MR. PATTISON: Your Honor, the way you or
15 I might in fact view that risk might be in light of
16 logic, reason, etcetera. As far as we know, this
17 actual trial is set up. However, other persons not
18 having their only interest in this actual case, but
19 in other cases, may not view it this same way. And
20 I am not going to put my own views in any way which
21 might risk these men.

22 THE COURT: I understand that position.

23 MR. PATTISON: The position we have is that
24 we would ask the Court, without asking the Court,
25 but we invite the Court's action, in light of our

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2 saying that we will not go along with the order
3 of the Court, and we may appeal from that order,
4 if any, which is what we will in fact do.

5 THE COURT: In view of the history of this
6 case, it is clear, if nothing else is clear, that
7 there is a substantial issue as to identification.

8 A contemporaneous identification by two re-
9 putable witnesses seems to me of great importance
10 to the defense of this case. We are not concerned
11 with the contents of these pages because I believe
12 the contents have been summarized for defense
13 counsel in chambers. What we are concerned with
14 are the names of the witnesses --the names of these
15 witnesses seem to me to constitute Brady material
16 and I believe that the government has an obligation
17 to turn it over.

18 There are a number of alternatives available
19 to me. I could rule that an instruction will be
20 given to the jury that the government refused to
21 turn over the names of the witnesses and that can
22 be considered as a form of spoliation against the
23 government, but I don't think that will do the job
24 in this case. I think the jury should hear the
25 witnesses, if the defendant wants to bring them

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2 before them. Will you bring them?

3 MRS. PIEL: I will.

4 THE COURT: You will subpoena them?

5 MRS. PIEL: Of course I don't know what
6 they are going to tell me, but my intention would
7 be to subpoena them.

8 THE COURT: So I don't think that an in-
9 struction on spoliation will do the job.

10 I could preclude the government from in-
11 troducing evidence, but I am not sure what evidence
12 I could preclude you from introducing, except the
13 evidence with respect to identification generally.
14 If I do that you have no case. That is the equiva-
15 lent of a dismissal. But it would be a dismissal
16 after jeopardy and you could never appeal from it,
17 which I think would be unfortunate.

18 I could hold you in contempt, but I don't
19 see that that is of any use because I think you have
20 handled this case well and with all consideration
21 to your full ethical responsibilities and there is
22 no point in holding you personally in contempt.

23 The only other alternative I know of, un-
24 less you can supply me with an alternative, is to
25 dismiss. And I take it you are inviting me to

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2 dismiss?

3 MR. PATTISON: May I say that we feel that
4 the best appellate route we have is with that
5 order, from that order, rather than our presently
6 trying to seek a writ without the order dismissing
7 the case. It just is that we feel legally we
8 would be in the most effective posture. It is
9 just the vehicle by which we choose to get to the
10 Court of Appeals on this point. I think that it
11 is academic in a sense as to what route we take.

12 THE COURT: Not completely academic because
13 my problem is again calendar. I have calendared
14 this case for Wednesday. I suppose I can get some-
15 thing else.

16 MR. PATTISON: He will be out on bail now
17 anyway, your Honor, I will assume --

18 MRS. PIEL: I seek a further consideration
19 of your Honor on this issue, because I believe that
20 the issue of not turning over these names as Brady
21 material is part of the other issue which I brought
22 up in my motion and letter which I presented to
23 your Honor this morning.

24 It seems to me that those issues should
25 properly be before the Court of Appeals.

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2 THE COURT: I am not going to decide on
3 those issues because I don't believe that they are
4 decisive. I believe that this case is being tried
5 de novo and that the government should not be
6 punished for mistakes in the past.

7 The issue is whether this case presently
8 before me can be properly tried. And my view is
9 that it cannot be properly tried unless the names
10 of these two people are turned over to you. I
11 think there is an inherent difficulty in this case
12 because of the lapse of time. The Wade problem is
13 extremely difficult, the whole identification problem
14 is very difficult because these government identi-
15 fication witnesses, as well as defense identifica-
16 tion witnesses are going to find it very difficult
17 to identify on the basis of what they remember of
18 the event. They are going to identify to a large
19 extent on the basis of what they see in the Court-
20 room.

21 I am not trying to prejudge that and I am
22 not saying that I would grant a motion under Wade,
23 but in view of all of those problems, a contemporaneous
24 failure to identify is very serious. Would these
25 people know this defendant himself?

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2 MR. PATTISON: I think not. That would
3 be part of cross-examination, direct examination
4 and so forth.

5 THE COURT: We don't know. Defense counsel
6 if defense counsel had the names she could find
7 out whether these people knew Fernandez as well
8 as Tier and then if they did, if they knew Fernandez
9 as well as Tier and did not identify him as Fernandez
10 but as Tier, then it would be very persuasive
11 evidence.

12 MR. PATTISON: Of course.

13 THE COURT: You leave me no alternative but
14 to grant defendant's motion.

15 MR. PATTISON: I would ask for a stay now
16 until 10 a.m. for me just to check with our office,
17 with Mr. Morse. Since Mrs. Piel would be here now,
18 rather than waste any more time, I just wanted to
19 meet with the Court so that the Court could know
20 how we viewed the case.

21 THE COURT: Defendant's motion to dismiss
22 is granted for the reason stated. Court exhibit
23 1-C is directed to be resealed by the Clerk, two
24 pages, 45 and 46, for purposes of appeal, and the
25 order of dismissal is stayed until 10 o'clock

1
2 tomorrow. Both of you will be before me 10
3 o'clock tomorrow. We have somebody from the
4 marshal's office here.

5 Are you in a position to transport Mr.
6 Fernandez to the Queens House of Detention promptly
7 from the West Street House of Detention?

8 THE MARSHAL: Yes sir.

9 THE COURT: Will you please do so.

10 Writ satisfied. Defendant is to be returned
11 forthwith to the Queens House of Detention. I am
12 giving this to the marshal.

13 This is a big day for Mr. Fernandez. Con-
14 gratulations, Mrs. Piel, a very fine piece of
15 advocacy.

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FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D. NY

JAN 11 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
-against- :
 :
FRED FERNANDEZ, :
 :
Defendant. :
-----X

TIME AM
PM

71-CR-218

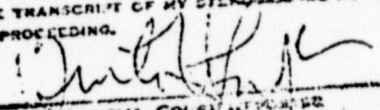
United States Courthouse
Brooklyn, New York

December 4, 1973

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

I HEREBY CERTIFY THAT THE WITHIN COPY IS A TRUE AND
ACCURATE TRANSCRIPT OF MY STENOGRAPHIC NOTES TAKEN
AT SUCH PROCEEDING.



OFFICIAL COURT REPORTER

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

ROBERT A. MORSE, ESQ.,
United States Attorney
for the Eastern District of New York

BY: THOMAS PATTISON, ESQ.,
Assistant United States Attorney

ELEANOR JACKSON PIEL, ESQ.,
Attorney for Defendant

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1 THE COURT: Good morning.

2 Good morning, Mr. Fernandez.

3 What does the Government desire?

4 MR. PATTISON: We have not changed our
5 thoughts, your Honor.

6 THE COURT: We will stay until 5:00
7 at this moment, unless you want a further stay
8 to the Court of Appeals.

9 MR. PATTISON: We just want it made clear
10 now that the view that we have is that there is
11 a very grave risk here, and I believe that the
12 remedy might be that we could agree to those
13 facts, that is that these men picked out Tier
14 and we would agree that that could be used in
15 court for whatever use it might be wanted.

16 THE COURT: I don't see how --

17 MR. PATTISON: But we will not turn over
18 the names.

19 THE COURT: I don't see how that could
20 be sufficient because it may well be that they did
21 know this defendant and that would make them
22 powerful witnesses. Unless defense counsel can
23 examine them and follow that lead I don't see
24 how she can adequately prepare the case.
25

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2 In my opinion, based on what has been
3 said, the Government's contention about danger
4 to these witnesses is quite unfounded. I am
5 completely unconvinced that there is any danger
6 to these witnesses and balancing the lack of
7 danger to the witnesses as against the vital
8 nature of the evidence, I have no doubt that the
9 evidence has to be supplied or that the case
10 has to be dismissed.

11 MR. PATTISON: Very well, your Honor.

12 May I just make it clear then that the
13 Court's ruling that there is no risk involved
14 was not in fact based upon any hearing, evidence,
15 anything like that.

16 THE COURT: I'll be glad to have a hearing,
17 if you would like. I will be glad to have a
18 hearing, if you would like. Based on what you have
19 said, I didn't say there was no danger. If I
20 did, I correct myself. I believe there is no
21 substantial danger. There is a danger in any
22 case anytime a witness comes forward. But I
23 think that based upon what I have seen in my
24 experience in this court and elsewhere that the
25 danger here is minimal

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2 MR. PATTISON: Your Honor, may I just
3 say that -- just so that it is clear -- that
4 these men were interviewed only under the
5 terms that their names would not be made known
6 later and that had that not been said to them
7 they would not have offered the help which they
8 in fact did.

9 THE COURT: I think that is probably
10 the reason. It's not the danger that's involved
11 here but the fact that the Government made a
12 private agreement with them that they would not
13 reveal their information.

14 MR. PATTISON: That agreement was not
15 made without any merit, without any reason for
16 it.

17 THE COURT: At that time, there may have
18 been danger, but we have the --

19 MR. PATTISON: That danger still exists.

20 THE COURT: We have the two people that
21 they have identified convicted and we have this
22 defendant who has every reason to want to keep
23 these men out.

24 MR. PATTISON: This man's friends
25 possessed notes from one of the last trials --

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2 again I want to raise this without raising any
3 other charge--inference at all, but that there
4 are other members of their friends' group, etc.,
5 whatever it might be called, who have a definite
6 interest in the outcome of the trial.

7 THE COURT: It just flies in the face
8 of everything that I know to believe that these
9 people are in danger. It just really trivializes
10 the whole contention that the Government makes
11 in cases like this to say that this case can't
12 go forward because of the danger. I believe the
13 reason for the position of the Government is that
14 the agents made an arrangement with these people
15 that their names would not be revealed because
16 at the time the information was given they were
17 in mortal terror. But that kind of arrangement
18 can't bind the Court.

19 There is no privilege of that kind that
20 can bind the Court in a subsequent proceeding
21 when events have changed. Now, if the Government
22 wants to meet that commitment to these witnesses
23 I can understand it, and appreciate it and it
24 may be perfectly sound. But I cannot base a
25 conviction or a possible conviction under these

1
2 circumstances.

3 The Government has to make a decision
4 whether it wants to reveal or not.

5 MR. PATTISON: Your Honor, may I say that
6 we have checked over the last past day or two and
7 that that risk still does exist.

8 THE COURT: If you want a hearing I'll
9 be glad to give it to you, otherwise I have to--

10 MR. PATTISON: I don't know how a hearing
11 could be held without having these men in court.
12 That would be --

13 THE COURT: If you have anything else
14 I'll be glad to hear it.

15 MR. PATTISON: We can do it in camera
16 without defense counsel present, if that is what
17 the Court means?

18 THE COURT: I am here available to do
19 whatever counsel want me to do. I am just a
20 passive decider of facts.

21 MR. PATTISON: Would the Court possibly
22 allow us to offer evidence in camera without
23 it being turned over at any other time, no matter
24 what the Court's ruling was?

25 THE COURT: I'll be delighted, if you want

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2 to have in camera evidence, to hear it, but I
3 won't change my decision because I don't believe
4 that it can be done in the absence of counsel
5 effectively.

6 However, if you want to do it to make
7 a record for the Appellate Court, I'll be glad
8 to hear it, and you are afforded the opportunity
9 for a hearing of this kind, if you want it.

10 MR. PATTISON: Possibly, what we might
11 do then is to just send to the Court, submit
12 to the Court a sealed envelope then with the
13 information that the Court may then give us back
14 and we can then use on appeal.

15 THE COURT: Very well.

16 MRS. PIEL: One thing I think is clear,
17 but I want to make sure that it is clear, that
18 the danger -- I'm asking, that the danger to the
19 Government does not come from Fernandez but rather
20 from other people.

21 MR. PATTISON: We do not say that, that
22 there is no risk from him at all.

23 THE COURT: Why should Fernandez want
24 to do anything to these witnesses who could be
25 favorable to him?

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2 MR. PATTISON: He may feel that this
3 is not his best point, strongest issue in the
4 case. He may just feel that they sent two of
5 his friends away, which may override other
6 factors.

7 He has other points which he can raise
8 at the trial which he feels might be enough.

9 THE COURT: I find this completely far
10 fetched, I must say.

11 MR. PATTISON: All I can say is that I do
12 not think so.

13 Your Honor, very well, if we can move
14 on to one last point, your Honor.

15 THE COURT: Yes.

16 MR. PATTISON: I have read over minutes,
17 and it appeared that at 10:00 a.m. on the
18 3rd, Monday, the Court made certain comments
19 which I feel impugn the prior assistants in
20 this case, and I think it was not fair.

21 THE COURT: This is on page 50.

22 MR. PATTISON: It might start, your Honor
23 -- 49, the top of page 49, the prior page.
24 Mr. Stechel, Mr. Schlam, Mr. Träger, Mr. Puccio
25 have all worked on this case. None of them have

1
2 in fact turned over these items. They did turn
3 it over to a court, a judge, who also didn't
4 turn it over.

5 THE COURT: I haven't critized anybody
6 in the case. I have said specifically I am passing
7 no judgment on anything that happened before. I
8 said that in this record and I say that again,
9 I don't know anything at all about why they did
10 what they did or why they didn't do what they
11 did, it's of no concern to me.

12 MR. PATTISON: Very well.

13 THE COURT: The only concern I have is
14 with you, and I am satisfied with you, you are
15 the only one before me. If you want me to with-
16 draw that comment I will. If you want me to
17 withdraw that comment I will.

18 MR.PATTISON: No, I do not. But I would
19 like to have it broadened slightly to include
20 the other assistants who have appeared before
21 you in various other cases.

22 THE COURT: In those other cases they
23 conduct themselves properly or else they get
24 straightened out.

25 MR. PATTISON: Very well. Thank you.

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2 MRS. PIEL: The indictment having been
3 dismissed, is the bail exonerated?

4 THE COURT: The bail is exonerated. You
5 are free.

6 MR. PATTISON: Might there be one last
7 order of the Court, that he not approach anyone,
8 witnesses, at any of the prior trials without
9 leave of the Court, or without our being made
10 aware of it -- personally, that is, not including
11 counsel.

12 MRS. PIEL: Unless we are going to try
13 the case again, I have no interest in -- and
14 I'm sure Mr. Fernandez doesn't, unless if they
15 come upon him then --

16 MR. PATTISON: They will make every effort
17 not to.

18 MRS. PIEL: I'm sure that he will not seek
19 them out, anyway.

20 THE DEFENDANT: No.

21 THE COURT: Thank you. That's your
22 statement in his presence.

23 THE CLERK: I am turning over sealed
24 exhibits marked as Court Exhibit 1C, Court
25 Exhibit 2, which was marked Court Exhibit 2 on

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2 November 30, 1973, and Court Exhibit 1, which
3 was marked Court Exhibit 1 on November 27, 1973.

4 I am turning them over to Thomas Pattison.
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